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GENERAL SECTION

INTERNATIONAL UNIVERSITY OF THE AIR

by THÉO FLEISCHMAN

Chairman of the International University of the Air

*The International University of the Air (*Université Radiophonique Internationale — *URI) held its General Assembly last April at the headquarters of* UNESCO *in Paris. The meeting was attended by 55 representatives of the radio and television organisations of Australia, Austria, Belgium, Brazil, Canada, Czechoslovakia, Denmark, Finland, France, Germany, Hungary, India, Israel, Italy, Japan, Luxembourg, Monte Carlo, Morocco, Netherlands, Poland, Portugal, Spain, Sweden, Switzerland, United Kingdom, United States, Uruguay, the Vatican and Yugoslavia. Also present in the capacity of observers were Mr. Gilliéron, Director of the EBU Administrative Office, and Mr. Tor Gjesdal, Mr. Walter Steigner and Mr. Fernand Pouey of* UNESCO.

This General Assembly coincided with the 10th anniversary of the URI. In recognition of the occasion, we have asked Mr. Théo Fleischman, Honorary Administrator-Director General of the INR and permanent Chairman of the URI, to trace the development of this important institution.

The representatives of a number of broadcasting organisations met in Nice in February 1949 at the invitation of the Radiodiffusion Française. Taking the initiative at this meeting, Mr. Wladimir Porché, at that time Director-General of the RTF, proposed to group under a common scheme broadcasts on a University level or of an educational nature to be provided by competent persons from all over the world.

The moment was well chosen and we felt at the time that if radio was to continue to attract an ever-growing audience it would also have to increase and enrich its sources of inspiration, selecting none but the finest and the most productive. It would need to lend its resonance to the most learned and the most eloquent voices, and at the same time provide the vehicle for every budding, flourishing thought in every continent. Dark and tragic years were just behind us and the time, it seemed, was now past when our actions had to be governed to too large an extent by the dictates of service to our national heritage. This was the threshold of an era of passionate curiosity and there was urgent need to extend the boundaries of human knowledge farther than ever before, beyond the limits of frontiers and the barriers of language. Broadcasting transmitters had undoubtedly the power to act as the cross-roads in sound of a world which was already demanding that those who work and think in every continent should meet and compare notes, those whose names are a credit to the world of letters and of science, those whom we had decided to ask to help to make this wonderful dream of human exchanges a reality, accessible through the medium of the ether.

That is why Mr. Wladimir Porché's proposal was welcomed with such enthusiasm and the idea was enlarged upon during the discussions. A study of the impressive results already obtained by the French radio with its *Heure de Culture Française* made it possible to cherish the ambition that they might even be surpassed. The general lines along which it was decided to run the new enterprise were not laid down with the intention of providing a University education for everybody but, in the words of a final resolution, " a University education by means of radio programmes addressed to a University audience, properly speaking, as well as to an audience possessing a standard of culture sufficiently high to understand and assimilate all branches of knowledge and philosophy ". In this way the basic elements of the URI were determined and with the assurance of the cooperation of the finest experts in the world it proposed to produce and exchange radio programmes — and later television programmes — of a cultural nature.

At the meeting on 21st February 1949 in the Palais du Centre Universitaire Méditerranéen at which the decision was taken to launch the undertaking, a number of prominent figures praised this noble enterprise and gave it their encouragement Mr. Mario Roques, member

of the Institute of France, declared : " You are about to develop a common speech that will be able to be translated into every language, a form of speech which will be regulated, directed and propagated in all directions, which will certainly vary in tendency but will gather together the best of human thought throughout the world and send it out again to all corners of the earth. " To these words may be added the remarks of Mr. Torrès Bodet speaking in the name of UNESCO : " All the periods of intense intellectual activity have been characterised by their universality. It was universal thought that crossed all the frontiers and all the barriers created by the diversity of languages and made it possible for the Renaissance and Humanism to leave such a rich heritage. What you are trying to do is to create a new humanism, a new universality of thought. " Mr. Wladimir Porché, to whom we owed this idea and whose stirring conviction inspired a similar enthusiasm in us, interpreted the word university at the outset both in the strict sense of the word — in its " University " sense — and in the sense that approximates to the word universality. He advocated an extensive study of the great problems of our age : " It is also our concern to give careful attention to the expression of a thought that is constantly developing. The new forms of thought lead us to make constant comparisons and to be always raising questions, and the object of an International University of the Air which brings together vastly different viewpoints is precisely to accustom its audience to this constant revision. This may help to bring a certain measure of peace of mind to listeners and thereby a similar peace to the whole of humanity. "

The URI set out to apply these recommendations, and its internal organisation and working procedure were soon in order. At the time of writing, all broadcasting organisations wishing to do so are admitted to its meetings and their representatives become, as of right, members of the Council which meets every two years in General Assembly. These Assemblies decide which programmes are to be given and do what is necessary for the proper functioning of the institution. As a link between the Assemblies, a permanent Committee has been formed and it meets every six months [1]. The permanent secretariat of the URI is in Paris and it is the RTF which has generously agreed to be responsible for it. Membership of the URI by radio and television organisations implies agreeing to pay the fees of the lecturers whose engagement they consent to, without the obligation of providing any themselves. In any event, these organisations receive the original texts and a French translation of all the lectures on the URI programme schedule, and each is free to broadcast only what it considers suitable. It is not only at liberty to choose from among the lectures offered but it may use them in different forms.

Concentrating on the study of problems of the modern world and questions concerning culture in general, the International University of the Air organises series of broadcasts including sufficient lectures to allow the subject to be treated in detail. Some of the titles will give an idea of the diversity and the importance of the subjects chosen during the past few years : The rights of Man, Genocide, Evolution of the Contemporary World, Nuclear Physics, Science of the Soil, Cybernetics, Cosmogonies, Peaceful Uses of Atomic Energy, Radioactive Isotopes, Automatism and Automation, Antibiotics, Migration and movement of peoples, Spelæology, Zoopsychology, Arid Zones, Poetry and the Elements, Contemporary Art, Pictorial Sensibility, Folk Music, Art and Urbanism, Literary Interpretation of the Landscape, the Cinema throughout the World, etc.

Among the authors of the lectures may be mentioned : Lord Russell, Josué de Castro, Charles Morgan, Jean Rostand, Mrs. Roosevelt, Karl Jaspers, Louis de Broglie, Jaime Torrès Bodet, Mrs. Maria Montessori, Paul Bordet, Salvador de Madariaga, Lord Cherwell, Jean Cocteau, René Clair, Mahdi Allam, Marcel Florkin, Jean Zabinski, Vasco Pratolini, Octavio Piaz, Nel Sheridan, Ventura Garcia Calderon, etc. Eighty-three Universities in Europe, the United States, Australia, Brazil, India, and the Lebanon have assisted in the production of certain programmes.

In addition, television has joined sound radio and is already making an outstanding contribution. Its use will make possible the most impressive and ambitious projects in the future. Already the URI has studied various ideas for programmes and proposed to the EBU Programme Committee the series *High Places of the Mind* which was the subject of exchanges by nine EBU member organisations in 1958 and another series *Scientific Curiosities* at present being exchanged between 13 member organisations.

In 1957 the International University of the Air was responsible for having published by Robert Laffont (Paris) a volume entitled *L'Esprit Européen* containing lectures on the subject of the European Mind (Europe and the Universities, Writers and the European Idea, the European Type). Then in 1958 some of the lectures in the series *Prefaces for Radio (Why do you write?)* were collected in one of the issues of the review *La Table Ronde*. The same review also intends to devote another number to the large-scale enquiry being broadcast at the moment — *The Cinema throughout the World.*

In view of the fact that it coincided with the 10th anniversary of the URI, the April General Assembly acquired

[1] This Committee, elected for two years, is composed at present of the Chairman of the URI and the following members : MM. René Dovaz, Director of Radio-Genève, Nils-Olof Franzen, Programme Director of Sveriges Radio, Egon Tomc, Programme Director of Radio-Ljubljana, Paul Gilson, Director of RTF Artistic Services, Michel Robida, Director of RTF International Exchanges, and, for television questions, S. Pugliese, Chairman of the Television Committee. The Committee is assisted by the permanent Secretary, Mr. Louis Foucher, and also by Mr. Ostoya, Mrs. Odette Duchâteau, Head of the RTF Service of International Exchanges, Mrs. Geneviève Druon and Mr. Loris.

a special character. Thanks to the friendly solicitude and the active interest shown by the Director-General of the RTF, Mr. Christian Chavanon, the session was marked by two ceremonies—the opening ceremony which was held in the big amphitheatre of UNESCO House in the presence of the representative of the Minister of Information, and of Ambassador Seydoux, Director of the Cultural Services of the French Ministry of Foreign Affairs, Mr. Christian Chavanon and Mr. Wladimir Porché; and the closing ceremony at the University of Caen. These two ceremonies were the occasion for drawing up a report on activities during the past ten years and presenting some eloquent figures indicating progress in terms of quantity. In 1949, the representatives of the broadcasting organisations had come from eleven different countries. Fifteen countries were represented in 1951, 19 in 1953, 23 in 1955, 25 in 1957 and 31 this year. From 1949 to 1951 the URI had received and distributed 936 texts, 2931 from 1951 to 1953, 7616 from 1953 to 1955, 8978 from 1955 to 1957 and 13,760 from 1957 to 1959. Between 1949 and 1959 there has been a total of 34,221 lectures and meetings.

There is something to be learned and encouragement to be gained from an appreciation of what has been done. It has now been proved that the initiative taken by Mr. Porché ten years ago was born of a real need, that radio and television possess inexhaustible possibilities for striving towards a higher spiritual plane—a duty which they are not failing to carry out, that they offer unstintingly of their vast, incalculable, listening audience with the highest of motives, and that the International University of the Air is contributing, as was hoped at the time of its foundation, to the creation of a new universality of human thought.

ENGLISH BY RADIO

by S. F. STEVENS

BBC "English by Radio" Manager

The External Services of the BBC broadcast elementary and intermediate English lessons with explanations in nineteen languages. Transcriptions of these programmes, with explanations in these languages and an additional eighteen, making a total of thirty-seven in all, are sent free to broadcasting stations in all five Continents.

Behind these two bald statements lies one of the romances of sound broadcasting.

In 1943 the European Services of the Corporation began a daily five-minute lesson given in English only but, until the war ended, we had no idea of how the lessons were received, or whether they were serving a useful purpose. However, when hostilities ended in Europe and we were once again in touch with our audience, our doubts were quickly resolved. The programmes were expanded immediately and the first attempt made to provide teaching with explanations in the learner's own language. In 1947 we decided to experiment with lessons for complete beginners who, until then, had not been catered for.

The Institute of Education at London University, which includes a department under Professor Bruce Pattison where the problems of teaching English as a foreign language are studied, was asked to help, and in little more than twelve months we produced, with their assistance, a basic course for complete beginners, which was given the title *Listen and Speak*. These lessons—there are 165 in the course—were designed for adaptation into any European language. Although in some cases they were received with qualified approval from people who doubted that this kind of teaching could be done satisfactorily by radio, they were immediately successful.

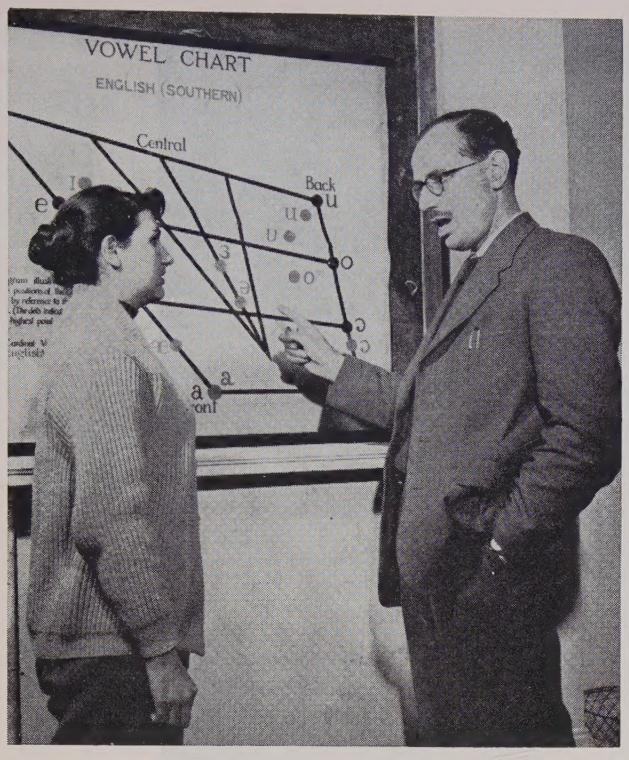
The fundamental idea behind the method on which these lessons are based is that the essential skill in learning a language is not the learning of words, but the ability to construct sentences; and so the commonest patterns of English sentences, carefully graded, are taught in contexts which help to establish their meaning clearly.

The lessons are brought to life by using situations in which English families lead their normal lives. The 'Greys', the 'Browns', the 'Parkers', the 'Gills', and the 'Youngs' and many others have now millions of friends all over the world.

For the listener who has progressed beyond the 'bilingual' elementary and intermediate stages, there is a great variety of lessons entirely in English, which are repeated seven times a day. There are also two dictation exercises broadcast each day.

Listen and Speak is being gradually replaced by a more up to date course, *English for Today*. A third basic course, *English for You*, has been provided for adaptation into Asian and African languages. This method was used for a carefully controlled experiment for teaching widely scattered communities in Uganda, and has been very favourably reported on by the Department of Community Development there.

Successful attempts have been made to overcome the main limitations of radio teaching. Elementary listeners are encouraged to participate in the broadcast, first by repeating model English sentences, and later by providing appropriate answers to the radio teacher's questions. In the lessons which are entirely in English listener participation is carried a stage further. In the weekly programme, *Speak for Yourself*, the audience is given the opportunity



(BBC photo)

Mr. J. D. O'Connor, author of the BBC pronunciation and intonation courses, demonstrates an English vowel sound to a foreign student.

of taking part in a dramatised situation. For example, the listener is asked to imagine that he has entered a shop with the intention of buying a pair of shoes. A salesman speaks to him and is followed by a pause in which the listener is encouraged to say what he wishes to buy. ' Ghost ' voices then give a number of alternative responses which would fit the situation and the conversation is carried on in this way to the end of the episode.

Intermediate and advanced learners who wish to learn English for business and professional purposes are, of course, catered for. A current series of programmes deals with the work of airline operators, engineers, mechanics, pilots, stewardesses, etc. For listeners whose interest lies in the literary field, there are regular broadcasts of readings from English literature, based for the most part on the books chosen for the well-known Cambridge examinations for proficiency in English.

Every year, at mid-summer, the Department organises a Summer School at one of the residential colleges of London University. This School is attended by eighty or more listeners who come from all parts of Europe. Some pay their own expenses, and others are the guests of the BBC. These guests are normally chosen from leaders of ' English by Radio ' listening groups.

These listening groups have now been running for several years in all the countries of Europe and the nearer parts of the Middle East. One or two are located even further afield. Some are organised in schools, but the majority are groups of friends or workers who have a common interest in learning English. Included in the fifty odd groups that are registered in Spain are several that are organised in Seminaries where Roman Catholic missionaries are trained to use English as the lingua franca for their work in the field. In South East Asia Buddhist missionaries are also trained in English through the medium of our lessons. Other large groups are organised in industry, particularly the oil industry in the Middle East.

' English by Radio ' programmes are supplied free of charge to any broadcasting station wishing to use them. At any time the lessons are being broadcast by about 110 stations in all parts of the world. In the main world languages, bilingual programmes are provided fully recorded on discs. In the case of the lesser-known languages, scripts and advice on translation and adaptation are sent, together with recordings of the English conversations. In most countries of South East Asia and Latin America, ' English by Radio ' transcriptions are broadcast daily at peak times.

Gramophone records have now been made of the more important courses, and before the end of this year they will be on sale in most parts of the non-English-speaking world. As well as elementary, intermediate and advanced lessons, these gramophone courses include special lessons on English composition, pronunciation, intonation, English business practice, English traditional songs and readings from English literature.

Sixteen separate courses are available on records, and bilingual textbooks for these have been published in twenty-five languages.

These gramophone courses are distributed commercially by agents appointed by us in each country. The agent has the sole rights of manufacture and sale, but we control the retail price. The discs are either pressed from matrices supplied by us, or the agent processes the records from our tapes. Normally, the agent publishes the textbooks at his own expense from fully translated typescripts which we supply.

The agent pays the Corporation a royalty for each course that he sells.

The latest, and perhaps the most ambitious, project of the ' English by Radio ' Department is a course aimed at teachers of English in Asia and Africa. Its title is *Listen and Teach* and its contributors include most of the prominent experts in this field. The programmes provide help with the everyday problems of teachers, and through them it is hoped to provide a ' teacher training college of the air '. *Listen and Teach* is broadcast every week from the BBC's Far Eastern station in Malaya and from a number of national stations in South East Asia and Africa. The programmes have also been supplied as gramophone records to a large number of teacher training colleges in Asia and Africa.

We are experimenting with English by television and in a few months we hope to be able to offer television transcriptions aimed at teaching English to beginners.

(BBC photo)

Under the title " Listen and Teach ", the BBC English by Radio Department is recording an important new series of programmes designed to help teachers of English abroad, especially those in South-East Asia and Africa. The programmes are being prepared by leading authorities on the teaching of English as a foreign language, and include practical demonstrations with young pupils.

Mr. F. G. French, a well-known textbook writer, demonstrating with a group of Indian girls in the studio.

LANGUAGES IN WHICH ENGLISH BY RADIO IS BROADCAST	ADDITIONAL LANGUAGES USED FOR ENGLISH BY RADIO TRANSCRIPTIONS
Arabic	Bemba (Rhodesia)
Bengali	Brazilian
Bulgarian	Cantonese
Czech	Greenlandic
Finnish	Hausa
French	Indonesian-Malay
German	Kuoyu
Greek	Latin-American Spanish
Hindi	Luganda
Hungarian	Lwo
Italian	Malay
Maltese	Nyanja
Persian	Portuguese
Polish	Sinhalese
Russian	Somali
Serbo-Croat	Swahili
Spanish	Teochew
Turkish	Thai
Urdu	Vietnamese

ADDITIONAL LANGUAGES AVAILABLE ON GRAMOPHONE RECORDS

Danish	Norwegian
Dutch	Swedish
Hebrew	Tamil
Japanese	

THE NATIONAL ASSOCIATION FOR BETTER RADIO AND TELEVISION OF THE UNITED STATES

by CLARA S. LOGAN

President, National Association for Better Radio and Television

"...and shall we just carelessly allow children to hear any casual tales which may be devised by casual persons and to receive in their minds ideas for the most part the very opposite of those which we should wish them to have when they are grown up ?"

SOCRATES

" There was a child went forth every day, and the first object he look'd upon, that object he became, and that object became part of him for the day or a certain part of the day, or for many years or stretching cycles of years."

WALT WHITMAN

Just a few years ago, a very wise man said, " I believe that, considering the vast impact that broadcasting has on our way of life, we neglect a prime duty of citizenship when we fail to exercise our privilege and our responsibility to try to make broadcasting a more effective instrument of democracy." The man was Wayne Coy, then chairman of the Federal Communications Commission. (That U.S. regulatory body charged with seeing to it that the air waves are operated in the public interest.)

People working together, taking an active part in our American system of broadcasting, that is the National Association for Better Radio and Television (NAFBRAT). Formed in 1949 as a non-profit corporation, it represents the people before the sets, the people towards whom all this broadcasting activity is directed.

On its membership rolls are psychiatrists, educators, judges, church groups, attorneys, libraries, schools, parent groups, editors, ministers, priests.

All members receive *Television is Yours*, the NAFBRAT " text book " which tells how people in a community can work together to improve radio and television. Members receive special surveys, lists of recommended programmes, and the quarterly *NAFBRAT News-Letter*. The latter gives information of particular interest to the listener-viewer and joins members in a united programme.

Although NAFBRAT has been known primarily for its attacks on violence in children's programmes and violence in other programmes broadcast during the daytime and early evening hours when there is a large audience of children, we have had influence in other broadcasting areas.

In 1957 we sent a protest against KCOP (Los Angeles television station) to the Federal Communications Commission. This was a lengthy analysis and report of the entire week's programming. An audio record was also made. As a result of our protest, the sale of KCOP to other interests (at a large profit) was held up until the Federal Communications Commission had satisfied itself that the new licensees would make drastic improvement in order to adequately serve the community.

In another area we asked our members to write their representatives in Washington, also the Federal Communications Commission, to protest subliminal perception advertising on radio and television. We believe that this " hidden advertising " technique could be dangerous. If subliminal perception can sell popcorn, it could also sell politicians and propaganda. We also sent an open letter to the *Los Angeles Times*. Soon after our protests, our Los Angeles station KTLA dropped its plans to use subliminal perception, and two months later the National Association of Broadcasters decided to ban the process on television.

NAFBRAT's work is not fundamentally being against things. It is essentially one of supporting and encouraging television programmes that are suitable for their audiences, have artistic quality, and are commercially effective. NAFBRAT awards are highly valued in the industry, including its special Dr. Lee de Forest Award, so far awarded twice.

NAFBRAT's Evaluation Committee works the year round. Programmes are evaluated and those recommended are listed in our publication, *Look and Listen*. Evaluation is carried out according to carefully stated standards. The fifteen members of the committee look at all programmes being studied and meet twice a month for discussion and rating of programmes. *Look and Listen* is found in libraries, schools, and parent groups throughout the country. It is used by parents as a guide to acceptable listening for their children. There is no way to preview television programmes, and parents need this help.

Besides the *Look and Listen* project, the Evaluation Committee each year views, listens and rates all children's programmes, both network and local, broadcast in the Los Angeles area. The 1958 report is the eighth annual survey. This report is also in great demand throughout

the country. The programmes are put in six categories, ranging from excellent to most objectionable. Here are some television examples at both ends of the scale :

EXCELLENT

Capt. Kangaroo. — Like a jovial uncle with a pocket full of tricks and goodies, genial Capt. Kangaroo presides over one of the best children's programmes available today. Education and entertainment are woven neatly into songs, stories, skits, presentation of animals and appearance of guests. Of special note are the unique cartoons, clever puppet work, and the wonderful Mr. Greenjeans. Set in an imaginative format sure to delight children, while giving them a real sense of participation.

Leave it to Beaver. — An excellent, humorous story of the mishaps and adventures of a small boy, Beaver, and his slightly older brother. The father and mother are sympathetic and sensible. The entire home and family relationship is so well drawn that the well-plotted stories are completely believable.

MOST OBJECTIONABLE

Superman. — The essence of Superman is that he is violent — to those whom he thinks deserve it. He is permitted to commit violence under the pretence of imposing punishment. He is immortal and has powers beyond any physical, natural or religious law. Clark Kent as *Superman* shows up at just the right time and the right place to fight for " truth, justice, and the American Way ". There is no division between reality and fantasy. Crimes are solved because—and only because—a reporter can turn into a super-human investigator. Murder, kidnapping, and other crimes make this an outstanding example of exploitation of children, serving them poison mental food, to make sales and money.

Texas Rangers. — This series of television tales based on the famous State Constabulary does a grave injustice not only to history but to the Texas Ranger as an individual. The stories often distort facts, the motivations and conflicts are invalid, and only the sordid side of the Old Southwest is shown. Once again, law enforcement by bullet.

*

Most of the programmes in the " objectionable " and " most objectionable " categories are placed there because of the continuous emphasis on crime, including crime-Westerns. Because of the adamant defence of crime-Westerns in some quarters, we have listed our reasons why we believe they are not acceptable television fare for children.

ONE. — Distorted Values. Children's ideation is so coloured by witnessing violence, killing, shooting, cheating, outwitting, conniving, etc. that they grow up with a completely distorted sense of what is right and wrong in human social behaviour.

TWO. — Identification with the Criminal. Children identify themselves with the criminal and generally miss the point of " Crime doesn't pay " which the sponsors profess to be the sole purpose of these programmes. In actuality these children are intrigued by the technique they see the criminals use, but visualize themselves as more intelligent than these criminals and would out-smart the law-enforcing agents.

THREE. — Child Becomes Callous. Addiction to crime programmes has a definite effect on the emotional life of the child, often resulting in callousness. Seeing constant brutality, viciousness and unsocial acts results in hardness, intense selfishness, even in mercilessness, proportionate to the amount of exposure and its play on the native temperament of the child.

FOUR. — Basis for Anxieties. Crime programmes form a basis for phobias and anxieties. In some it stimulates a desire to emulate the behaviour of the criminals observed. Exciting western-crime programmes are a contributing factor to childhood neurosis and more specifically to sleep problems. They overstimulate without satisfying. It is like an addiction which temporarily gratifies, only to produce a greater and more insistent urge that is never really satisfied ...Waiting for the tension to be relieved and the plot resolved in the last few minutes results in too much tension build-up for many children to handle.

FIVE. — Motivations and Conflicts Unreal. The motivations and conflicts portrayed are unreal, and the solutions are invalid. Therefore, the child cannot use them to help resolve his own conflicts. He cannot assimilate them. They remain an indigestible mass, which only causes further irritation. He suffers from emotional indigestion.

SIX. — Sordid Side of Life. Life is presented as all conflict, strife, deception.

SEVEN. — Not Good Enough ! Defenders of crime-Westerns reply that they are not harmful, but they never say, " These crime-Westerns are the best thing a child can possibly have; they must have these rather than anything else because these things give the child inspiration, these enrich his life." Television could be an important adjunct in the emotional development and maturing of children by stimulating creativity, providing emotional release, presenting opportunities for identification with heroes representing healthy values, broadening their knowledge and understanding of the world and their place in it, and providing genuine aesthetic satisfaction.

EIGHT. — Distorted Picture of Old West. As Bernard de Voto, learned historian, stated : " The emphasis on Westerns today is a make-believe on a national scale. So far as it relates to reality at all, it dates back to a time period which lasted little more than twenty years and ended forever nearly seventy years ago. Gunmen who did most of the shooting and who are the Robin Hoods of the balladry were hired thugs, indistinguishable from metropolitan hoods of today and equally repulsive. The cowboy seems an illogical choice as a master symbol of the West. If the symbol is to stand for wilderness skill, the Rocky Mountain trapper of an earlier day would have served better, for his was the most complex skill ever exercised on this continent. If importance for the future makes a culture hero, then it should have been the homesteader, who brought the country in and created the West. Finally, the cowboy image is in great part phony, a counterfeit and concentration on it obscures the rich diversity of the West. Past or present, there is a lot more to the West than a cow outfit."

NINE. — Not Just a Story, But Real ! To most children, especially the young ones, the programmes are not just a story but are very real to them. Teachers tell of children believing that cowboys *now* always carry guns and all they do is run around on their horses, chasing and shooting down

robbers, bandits and murderers. There is no clear distinction between yesterday and today.

TEN. — " Crime Doesn't Pay " Defence. The crime-Western pays lip service to the unprofitable nature of crime, but all too often justice itself takes the form of brute force, of supernatural or miraculous intervention, or of tactics on the part of representatives of the law which are little better than those of the criminal. Or the perpetrator of crime meets destruction not as a result of the evil he has set in motion, but because he does something stupid; because he is incompetent as a criminal.

Further, the slogan " Crime does not pay " is not moral. Great harm has been done by teaching children they should not play hookey, that they should not steal or lie, *because it doesn't pay.*

ELEVEN. — Wrong Impression of Law Enforcement. They install in the minds of children the fallacy that all law enforcement officers are either stupid or corrupt.

TWELVE. — False Picture of American Life which not only deceives our children but exported crime-Westerns are creating false and unwise impressions of America. The two-fisted hero so much admired by many here is not quite so simon-pure in the eyes of foreigners because, even though he is a champion of law and order, his cause is seldom won before the wrongdoer has been pounded into submission.

THIRTEEN. — Children in Crime-Westerns are out slinging guns and chasing the villains. The child is an adult in his decisions and actions, disobeys authority, handles guns, guards criminals.

FOURTEEN. — Contributing Factor to Juvenile Delinquency. Scenes of crimes and violence may provide both suggestions and a kind of support for the hostile child, leading him to imitate these acts as expression of his own aggression. There is good reason to believe that television crime programmes (and their predecessor, radio crime programmes) are partially responsible for the downward trend in age of criminals.

FIFTEEN. — Too Many Crime-Westerns. There's a vast difference between seeing one crime-Western on Saturday afternoon in the cinema, and viewing them for three or four hours daily.

Note : *These Fifteen Reasons are the composite views of many Authorities, Psychologists, Psychiatrists, Judges, Directors of Prisons, Pediatricians, and others.*

In 1958, in conjunction with our annual survey of children's programmes, we made a survey of television crime before nine to find out what was being offered during the hours when there is a large audience of children. Even those of us who had been studying television fare throughout the years were shocked at the results of our survey. We found that crime on television had reached an all-time peak. The tabulation of crimes for the week included 161 murders, 60 so-called " justifiable " killings, 2 suicides, 192 attempted murders, 83 robberies, 15 kidnappings, 24 conspiracies to commit murder, 21 jailbreaks, 7 attempted lynchings, 6 dynamitings, 11 extortions, 2 cases of arson and 2 instances of physical torture. No count was made on the innumerable prolonged and brutal fights, the threats to kill, the sluggings, or the many times when characters in the crime programmes manhandled their victims, including women and children.

Mr. J. Edgar Hoover, director of the Federal Bureau of Investigation, had this to say about our survey : " The efforts which you and the members of your organization are exerting in regard to the violence being brought into the nation's living rooms by certain television stations are most commendable. There is no more effective force than righteously indignant public opinion in stifling this exceedingly unhealthy trend."

Our good common sense tells us that a diet of crime is not good for children, but because so many broadcasters and sponsors defend these programmes we have compiled statements from a great many experts. These statements refute claims that :

1. *Crime programmes give children an emotional outlet.*

Denial. Dr. Isidore Ziferstein, psychiatrist : " This large and overwhelming dosage of violence, rather than producing a release of emotions, results in an increase of tension and anxiety. This is most obvious in five- and six-year olds and in children who are already moderately disturbed, taking the form of fears, nightmares, disturbed sleep and appetite disturbances."

2. *The Western is a piece of Americana; the cowboy is a native hero.*

For a denial of this statement see above, No. 8 of the fifteen reasons why crime-Westerns are not suitable for children. Even if the crime-Westerns presented an accurate picture of the Old West, the violence and crime portrayed would have made them unsuitable fare for children.

3. *Our moral is always " Crime does not pay."*

Denial. A statement of the trustees of the Ohio Police Chiefs : " An overwhelming majority of television sketches and stories emphasize crime, dishonesty, violence and lax morals to the point where youth unconsciously acquires knowledge of underworld techniques. Our trustees feel that while the mind is in an embryonic and plastic state, these techniques displayed over and over on television, and thus almost perpetually before young viewers, become indelibly impressed upon them, and exert at least some influence upon their lives. Moral lessons cannot be gained from television half-hour programmes which devote the first 28 minutes to a showing of criminal characters preying upon righteous people. The success of the criminal characters is accentuated throughout the sketch up to the last minute or two. Then it is abruptly brought to a conclusion, leaving adults and adolescents confused."

4. *Nobody complains about violence in classics—from* Treasure Island *to* King Lear. *Why pick on us?*

Denial. Dr. Garry Cleveland Myers, Ph. D. " These classics are read or listened to in their entirety, as a rule, most of them not before the child is twelve or fourteen, and practically never with the sound effect comparable for stirring up imagery and emotions to that of the crime-mystery dramas. How many children have chosen to read or listen to these classics hours on end, or would so read or listen to a parent or teacher read even the script of these TV-radio dramas? Furthermore, would any

parent or teacher choose to read to any child day after day the most gruesome portion of *Treasure Island* or any other classic ? "

5. *Even if they are of no particular value, crime programmes do normal children no harm.*

Denial. Judge Frank J. Kronenberg, president of the New York State County Judges Association : " The argument of the broadcasters that crime programmes damage only children who are already emotionally unstable is contrary to common sense. We know that knowledge is obtained through viewing, that the wrong kind of knowledge obtained from the wrong kind of viewing will frequently lead to misbehaviour. Even if it were true that only the emotionally unstable are affected, there are still two million such children, and protecting them by shutting off these programmes would surely not stunt the growth of normal, stable children."

Added to these defences is the statement that there's a knob on the set. If you don't like a programme, just turn the knob. Unfortunately, as Gilbert Seldes has pointed out: " ... you cannot buy immunity by turning away from what you do not like. The fact is, the one child who does not see crime and horror programmes lives and will live in the world created by the fifty who do." In any case, the immediate responsibility for what goes out over a given channel does not lie with the viewer; it lies with the station licensee, and he cannot unburden himself of his responsibility under the law by telling parents to turn the knob.

Parents are finding it increasingly difficult in making sure their children's fare is acceptable. Recently a woman in Massachusetts wrote: " My children watch *Big Brother*, a noontime children's programme, every day. One day, before I had any warning of what was to follow, and before I could shut the set off, a daytime soap opera, usually innocuous, suddenly opened its programme with the sight of a nine year old boy suddenly whipping out his jack knife and stabbing his mother. She had disciplined him for something. You can imagine my consternation, and my helpless anger, both at that time and the many, many days since, when during the hours children all over the country are watching TV, I witness the steady onslaught on their impressionable minds of brutality, cruelty, violence and evil actions of all sorts."

Television and radio—unlike any other influence—penetrates our homes. A mother can choose a child's motion picture entertainment, but she must rely to a certain extent on the broadcaster to select acceptable programmes. When she finds out that certain broadcasters are not responsible, she can protest to the manager of the station, the sponsor, the newspapers, her representatives in Washington, and to the Federal Communications Commission. In all letters of criticism or praise, we urge people to avoid generalization. Carefully thought out letters will receive careful attention.

The future of broadcasting—the determination as to whether this mighty instrument is to serve the public up to its full responsibility—that future lies in the hands of the people themselves. They can " take it or leave it " or they can accept the challenge and do something about it. They can give support to the fine programmes. They can protest the bad ones. And, as in other fields, by working together in groups they can be more effective. That is why we urge people to form community listener-viewer groups. Informed, organized listener-viewer groups can assist materially in the economic and cultural development of radio and television.

NATIONAL ASSOCIATION FOR BETTER RADIO AND TELEVISION

" A non-profit corporation dedicated to the advancement of the public's interests in the broadcasting industry "

Aims and purposes

1. To co-ordinate the interests of civic, religious, educational, business and labour organizations and individuals for the purpose of encouraging the presentation of radio and television programmes which will maintain the high standards of the American people.
2. To provide listener-viewers with opportunities to meet and discuss their interests in radio and television.
3. To foster a deeper knowledge of the subject of radio-television as a social force by studying, by listening, and by observation; to evaluate programmes, and to publish the results.
4. To encourage complete and accurate information about radio and television in all newspapers, and reliable critical reviews of programmes.
5. To create a demand for programmes which will stimulate a greater sense of pride in our democratic form of government and encourage constructive thinking towards its preservation.
6. To create and maintain patronage for sponsors who broadcast programmes meeting with the standards recommended by this organization.
7. To convey findings and attitudes to stations, networks, sponsors and advertising agencies, as well as to the Federal Communications Commission and the general public.
8. To encourage the development of high individual standards of radio and television appreciation both in the schools and in the homes.
9. To encourage a co-operative attitude between the radio and television industry and the listening public.
10. To assist and cooperate with other organizations having similar or related purposes.
11. To offer radio and television stations community cooperation in the furtherance of their operation in the public interest.

BROADCASTS TO SCHOOLS OUT OF TERM

by ARNOLD STENZEL

Lecturer at the Pedagogical Institute of Esslingen, Neckar

It may come as a surprise to those who are ignorant of the fact to learn that most of the broadcasting organisations in the German Federal Republic continue to broadcast programmes for schools during the holidays. They may find it ridiculous that at a time when schools are closed and nothing is being taught a form of activity should be carried on which would appear to serve no useful purpose outside the field of teaching. It may seem just as absurd as a teacher giving lessons out of term to empty seats in a deserted classroom. The fact is, however, that these programmes have been going on in holiday time for some years now and the practice has never been dropped. Indeed, the tendency lately has been not merely to devise such programmes from material chosen at random but to base the selection on a definite conception. The main programme reviews addressed to schools have even acquired the habit of announcing these holiday time programmes just as they do the normal school programmes. In the circumstances, it might be worth while asking what considerations led the broadcasting organisations to take the trouble to transmit carefully prepared programmes to schools during the school holidays.

It should first be emphasised that the programmes transmitted to schools by the broadcasting organisations of Western Germany are not intended as a substitute for, but as an aid to, teaching—as in Austria, Switzerland, the Netherlands, Australia and other countries. The broadcast lessons are not of the type where the instruction given can be followed by any number of classes and the teacher in question instructs not only his own class but a number of others—he may not even know exactly how many. This is the type of programme that is broadcast to schools by the broadcasting organisations in North America, for example, and by stations in the United States operated by schools exclusively for the use of schools.

School broadcasting considered as a teaching aid, however, must take its place alongside the other educational aids such as pictures, films, maps, etc. The essence of school broadcasting is then that it adapts educational material to the characteristics of the broadcast medium and offers it thereafter for use in schools. The most common of the various forms of presentation possible in this field is one that closely resembles the radio play. The subject to be dealt with is set within the action of a play whose various scenes are linked by means of texts read by the announcer. Besides this method, other forms used are the reportage and the feature programme, for example, and to a lesser degree the straightforward lecture.

It would of course be senseless to draw up a programme schedule for the holidays consisting entirely of school broadcasts of the purely instructional or standard lesson type. In fact, both as regards their form and their purpose, such broadcasts are intended to fit in with a definite educational set-up and apart from this they have no useful significance. We can no longer speak of " broadcasting " in the proper sense here, for radio is only the technical instrument for transmitting something that in itself is foreign to broadcasting. That does not mean of course that radio should not broadcast conceptions that are foreign to the medium—it does broadcast them on occasion, thereby fulfilling an important task—but the difference that is apparent here between the two conceptions of school broadcasting is of considerable importance to the subject under consideration. Indeed if a school broadcast treats a theme in a manner that makes it accessible to children and at the same time adapts itself to the mould of broadcasting, it has a certain individuality. It is of course intended to be used for educational purposes and is prepared with this aim in view, but it has not been subordinated to this aim to such an extent that it has no other *raison d'être*.

This assertion which has to some extent been made *a priori* can also be confirmed *a posteriori*, by referring to experience in Western Germany (and probably in other countries too). First, it is an established fact that children are keen to listen in to school programmes and they often go so far as to listen regularly even out of school and independent of school lessons. Secondly, it has been discovered that broadcasts to schools are among the favourite programmes of adult listeners. The housewife peeling the potatoes or dusting to the accompaniment of the morning programme to schools has practically become legendary. When the Süddeutscher Rundfunk had to bring forward the time of one of the three school broadcasts on weekdays from 5.30 to 5 p.m. something happened which nobody had reckoned on : a large number of listeners with jobs protested because they could not be home from work at 5 o'clock and would therefore have to miss the school broadcasts which until then they had obviously listened to regularly and with interest. It is clear then that school broadcasting both by the content and the form of its productions satisfies the natural desire for knowledge both in children and in adults, and precisely because the subjects dealt with take very little for granted and the broadcasts are made as attractive as possible, school broadcasting appeals to a very large section of the listening audience. For that reason, many broadcasting organisations, such as Radio Bremen and Hessischer Rundfunk, for example,

have also instituted " school broadcasting for adults ", that is to say, a programme consisting of broadcasts of the type transmitted to schools given at a time when adults who are out at work all day can be reached. Broadcasts of this sort should acquire considerable importance now that the five-day week and the long weekend are gaining ground in Western Germany.

Broadcasts to schools have therefore, apart from their primary purpose which is to serve the schools, a significant place in the broadcasting organisation's scheme of programmes. To be sure, one might still object to programmes during the holidays on the grounds that at the time when broadcasts to schools are transmitted only a small number of adult listeners are available and therefore such programmes in holiday time fail to achieve an important purpose. To this it might be replied that in view of the number of children among listeners over the holiday period this type of programme is sufficiently important. If one were to imagine a programme schedule without broadcasts to schools, one would realise that there was a considerable gap between the programmes for children and those intended for adolescents. There are of course special programmes for children but these are addressed mainly to the undertens. There are also programmes for adolescents, but they are scarcely suitable for young people under 16. Without the programmes to schools then, there would be no broadcasts specially intended for the ages in between. The psychology of development shows that this age group is characterised by its realistic attitude to its environment, as opposed to what might be termed the " fairy-tale " outlook of the younger group. Thus children of this age tend to be matter-of-fact and rather prosaic in their search for knowledge of the world in which they are growing up. School broadcasting, which attempts to provide this knowledge, satisfies this tendency in the child. There are therefore good reasons for broadcasting programmes for schools even in the holidays and the experience so far gained by the broadcasting organisations in this field can only encourage them to continue their efforts.

The objection could be put forward that it is neither necessary nor desirable for children to listen to the radio during the holidays. This objection is perfectly legitimate but at the same time completely divorced from reality, for it overlooks the fact that most children do listen in any case. And the question arises whether it is not better to face up to facts and broadcast a programme that is specially intended for children and will even encourage their intellectual development, rather than leave them to the music and entertainment intended for adults generally heard all day long. It is preferable to make a virtue of necessity, rather than to let necessity persist.

There is another argument in favour of broadcasting programmes for schools during the holidays, which is tied up with organisational aspects. It is founded on certain conditions prevailing in the field of education in Western Germany. (The writer ignores whether similar conditions exist in other countries.) The long vacation or summer holiday, which lasts as a rule for six weeks, is taken at one stretch only in the towns. In the villages, on the other hand, the holidays are split up to suit the dates of the harvest. The first part comes at the time of the grain harvest, and this is followed by a few weeks in school before the potato harvest when the second part is taken. It is clear that there can be no hard and fast rule about the dates when these two holiday periods are to be fixed, and that it will depend rather on respective local conditions. One could therefore contend that there will always be a school open somewhere within the service area of one of the broadcasting organisations, and these schools are grateful to have school broadcasts provided for them during holiday time, especially as the second part of their long vacation usually falls at a time when normal school programmes are broadcast and they are unable to listen. When one considers that the little, isolated village schools are among the most regular and most grateful of listeners to school broadcasts, it seems all the more important that they should not be left unprovided for.

But even apart from this somewhat extraneous circumstance, it should be obvious from what has already been said that school broadcasting in holiday time has an important place in the programme schedule and that the broadcasting organisations have good reason to devote as much care to the preparation of the holiday time programmes as to the normal programmes for schools.

CONGRATULATIONS

We have pleasure in congratulating

Mr. David Morse, Director-General of the International Labour Office, on the 40th anniversary of the ILO. The official international commemoration of this event will be celebrated in Geneva on 15th June on the occasion of the 43rd Session of the Conference, which will be attended by the representatives of the Organisation's 80 member states.

Mr. Claude Schubiger, editor-in-chief of the weekly magazine *Radio Je Vois Tout*, Lausanne and Geneva, who has been decorated on behalf of the French Ministry of Public Education by Mr. Henri Guillemin, cultural attaché at the French Embassy in Berne, in presence of the French consul general in Lausanne, Mr. Blot, and a number of guests.

EUROVISION PROGRAMME STATISTICS

Period 1 July - 31 December 1958

I. ORIGIN OF PROGRAMMES

Organisations [1]	BBC	RTF	CLT	RMC	INR	NIR	NTS	ARD	ORF	DSR	SRT	SRG	RAI	ITA	Total	%
Number of programmes . .	17	40	—	1	2	4	4	7	4	2	2	2	17	—	102	
Percentage	16.6	39.2	—	1.0	2.0	3.9	3.9	6.9	3.9	2.0	2.0	2.0	16.6	—		100

II. DURATION

Total hours of transmission (duration at the point of origin)															124	
Total hours of trans. by each organisation	47	71	44	40	85	93	63	74	41	48	48	77	63	14	808	

III. TYPE OF PROGRAMME

Sport	8	32	—	—	1	—	1	3	—	—	1	—	5	—	51	50.0
Actualities	2	—	—	—	1	—	1	—	—	—	1	1	10	—	16	15.7
Light programmes	5	1	—	1	—	3	1	2	—	—	—	1	1	—	15	14.7
Drama, music, ballet . . .	2	2	—	—	—	—	—	2	4	1	—	—	—	—	11	10.8
Other cultural programmes .	—	2	—	—	—	—	—	—	—	—	—	—	—	—	2	2.0
Religious programmes . . .	—	3	—	—	—	—	—	—	—	1	—	—	1	—	5	5.0
Folklore	—	—	—	—	—	1	—	—	—	—	—	—	—	—	1	0.9
Children's programmes . .	—	—	—	—	—	—	1	—	—		—	—	—	—	1	0.9
Total	17	40	—	1	2	4	4	7	4	2	2	2	17	—	102	100.0

IV. PARTICIPATION IN EXCHANGES

No. of transmissions	40	71	43	32	62	72	46	43	21	30	28	53	52	10	603	
Percentage	39	70	42	31	61	71	45	42	20	29	27	52	51	10		

The above statistics on Eurovision programmes present only the programmes offered for Eurovision and consequently free for relay by all members participating in Eurovision.

They form only a part of the activities as regards exchange of live programmes between EBU members.

Very frequent bilateral programme exchanges capable of being offered as multilateral programmes take place between organisations with similar languages e.g. between Germany, Austria and Switzerland, between Holland and Flemish Belgium, between France, French Belgium, French Switzerland and Luxembourg, and between Denmark and Sweden, particularly in the drama and documentary field.

During the period under review (1st July-31st December 1958) approximately *450* bilateral programmes can be mentioned with a total transmission time of *447* hours. Whereas in Eurovision exchanges over this period sports programmes and actualities form 65.7% of the total number of programmes, this percentage is only 19% in bilateral exchanges.

81% of the total number of transmissions in bilateral exchanges consists of drama, documentary and light programme productions.

In addition to bilateral exchanges *118* unilateral programmes (not radiated in the country of origin but relayed to another country only) should be mentioned with a total transmission time of 24 hours, most of them as inserts to existing national programmes.

Further, extensive and systematic exchanges take place by means of film. Many artistic and cultural programmes and filmed contributions to newsreels, the international children's newsreel, the international agricultural newsreel and sports transmissions are currently exchanged in growing numbers between EBU members and associate members.

6 June 1954 - 31 December 1958

I. ORIGIN OF PROGRAMMES

	Period	BBC	RTF	CLT	RMC	INR	NIR	NTS	ARD	ORF	DSR	SRT	SRG	RAI	ITA	Special prog.	Total
A	6.6-31.12 1954	9	6	—	—	2	2	4	10	—	1	—	15	6	—	—	55
B	1.1-30.6 1955	—	10	—	—	1	2	4	7	—	—	—	1	9	—	—	34
C	1.7-31.12 1955	14	7	—	—	—	3	2	10	—	—	—	6	15	—	—	57
D	1.1-30.6 1956	16	16	1	5	5	3	5	19	1	—	—	9	63	—	—	143
E	1.7-31.12 1956	22	34	—	—	3	—	8	18	3	8	—	5	6	—	—	107
F	1.1-30.6 1957	26	27	5	2	3	1	7	19	5	2	—	6	17	—	—	120
G	1.7-31.12 1957	15	25	—	—	11	4	7	10	3	1	—	2	8	—	1	87
H	1.1-30.6 1958	15	16	1	—	5	4	6	8	19	—	13	5	9	—	—	101
I	1.7-31.12 1958	17	40	—	1	2	4	4	7	4	2	2	2	17	—	—	102
	Total	134	181	7	8	32	23	47	108	35	14	15	51	150	—	1	806

II. DURATION

Period	A	B	C	D	E	F	G	H	I	Total
Hours	73	44	71	156	117	136	125	135	124	981

III. TYPE OF PROGRAMME

	Number of programmes	Percentage
Sport	507	62.9
Actualities.	101	12.5
Light programmes	82	10.2
Drama, music, ballet	51	6.3
Other cultural programmes .	11	1.4
Religious programmes . . .	36	4.5
Folklore	12	1.5
Children's programmes . . .	6	0.7
Total	806	100

IV. PARTICIPATION IN EXCHANGES

	Period	BBC	RTF	CLT	RMC	INR	NIR	NTS	ARD	ORF	DSR	SRT	SRG	RAI	ITA	Special prog.	Total orig.	Orig. + relays	Average particip.
A	6.6-31.12 1954 . .	45	44	—	—	45	46	45	45	—	? 15	—	37	36	—	—	46*	358	
B	1.1-30.6 1955 . .	—	26	—	—	32	32	29	27	—	—	—	25	27	—	—	34	198	
C	1.7-31.12 1955 . .	21	39	—	—	36	45	39	37	6	—	—	46	30	—	—	57	299	
D	1.1-30.6 1956 . .	60	89	50	5	81	97	87	81	72	6	—	91	94	—	—	143	813	
E	1.7-31.12 1956 . .	34	64	43	1	85	75	61	39	29	19	1	40	29	—	—	107	520	
F	1.1-30.6 1957 . .	52	67	46	52	67	71	53	44	30	14	11	39	39	—	—	120	585	
G	1.7-31.12 1957 . .	29	53	26	33	61	62	37	37	19	18	6	35	41	2	1	87	460	
H	1.1-30.6 1958 . .	50	66	43	28	66	63	49	68	57	32	24	61	59	10	—	101	676	
I	1.7-31.12 1958 . .	39	71	43	32	61	73	46	44	21	30	28	53	52	10	—	102	603	
	Total	330	519	251	151	534	564	446	422	234	134	70	427	407	22	1	797	4512	5.66 org.

* Total number of transmissions during this period : 55. No information available on participation for 9 transmissions (8.7-31.8.1954).

[1] The abbreviations of the names of television organisations are as follows :

BBC = British Broadcasting Corporation (United Kingdom)
RTF = Radiodiffusion-Télévision Française (France)
CLT = Compagnie Luxembourgeoise de Télédiffusion — Radio-Télé-Luxembourg (Luxembourg)
RMC = Radio Monte-Carlo (Monaco)
INR = Institut National Belge de Radiodiffusion (Belgium)
NIR = Belgisch Nationaal Instituut voor Radio-Omroep (Belgium)
NTS = Nederlandse Televisie Stichting (Netherlands)
ARD = Arbeitsgemeinschaft der Öffentlich-Rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (German Federal Republic)
ORF = Oesterreichischer Rundfunk-GmbH (Austria)
DSR = Statsradiofonien (Denmark)
SRT = Sveriges Radio (Sweden)
SRG = Schweizerische Rundspruch Gesellschaft (Switzerland)
RAI = Radiotelevisione Italiana (Italy)
ITA = Independent Television Authority (United Kingdom)

NEWS AND INFORMATION

INTERNATIONAL

INTERNATIONAL AGRICULTURAL NEWSREEL

First International Conference. — At the request of the EBU Programme Committee, a meeting was held in Paris recently of persons responsible for the International Agricultural Newsreel, which forms part of the system of exchanges on film operating between the member organisations of Eurovision.

The agenda proposed by Mr. Jean d'Arcy of the Radiodiffusion-Télévision Française, at whose invitation the conference was called, included a survey of the agricultural broadcasts offered on television by each of the countries represented.

Austria first started broadcasting agricultural programmes in its television service in June 1958 and at present there is a thirty-minute programme every six or seven weeks which it is hoped to broadcast once a month in the near future.

In *Belgium*, the INR, which also started agricultural programmes in June 1958, broadcasts a half-hour programme every fortnight. It consists of 10 minutes of the International Newsreel followed by one or two enquiries into important agricultural questions. Contributions to the International Newsreel are selected with a view to emphasising the human aspect rather than the educational. The NIR broadcasts an agricultural programme once a month.

Denmark has also a monthly thirty-minute programme and since October 1958 half of the time is given to the International Newsreel.

In *France*, agricultural broadcasting began in 1951 when a weekly thirty-minute programme dealing with general aspects of the subject was transmitted. In 1954, a series of 13 thirty-minute broadcasts was devoted to a sociological survey of rural education entitled *Etat d'Urgence* [1]. This was followed by a further series of 13 programmes of a more technical nature. At present, two thirty-minute programmes are broadcast, one every Friday dealing with different aspects of a given problem, and the other once a month on Mondays devoted to the International Newsreel.

Italy started agricultural broadcasting in January 1955 and at present transmits two programmes a week. On Thursdays from 20.00 to 20.30 hours there is a programme addressed to an audience of 1½ million viewers, which consists of gardening topics for 8 minutes and subjects of interest to young farmers for the remainder of the time. The second programme lasts for 45 minutes and is given on Sunday mornings. It is devoted to agricultural news and instructive topics and includes an international section lasting for 8 to 10 minutes composed of the items received as contributions to the International Newsreel. In four years, the RAI has broadcast 340 programmes, representing 250 hours.

In the *Netherlands*, the NTS broadcasts a thirty-minute programme consisting entirely of contributions to the International Newsreel.

Sweden has been broadcasting agricultural programmes since October 1958. Its monthly thirty-minute programme includes foreign contributions to the International Newsreel.

Agricultural broadcasting started in *Switzerland*'s French programme service in 1958 and is to be introduced in German-language and Italian-language programmes.

The *United Kingdom* has been broadcasting agricultural programmes on television since October 1957 [1]. At first the weekly half-hour programme was broadcast on Thursday mornings but the time has been changed to 14.00 hours on Sunday. Films, lasting generally for 20 minutes, that have been made both abroad and in the United Kingdom are shown during the programme. The purpose is primarily educational. The BBC does not take part in the system of exchanges between the countries contributing to the International Newsreel.

UNDA

International Catholic Television Meeting at Monte Carlo. — Sixteen countries participated and 61 films and telerecordings were shown to the delegates at the second international Catholic Television Conference organised by the International Catholic Association for Radio and Television (UNDA) at Monte Carlo in February. Representatives from the following countries attended : Argentina, Austria, Belgium, Canada, Colombia, France, Germany, Italy, Luxembourg, Mexico, Monaco, Netherlands, Spain, Switzerland, United Kingdom and United States.

The viewing of films and telerecordings lasted for a total of 35 hours. The jury consisted of 16 members — 13 delegates from the countries represented and three members of the Board of UNDA. Prizes were awarded to 5 films in the following categories : drama, actualities, reportages and investigations, liturgy, Church history. Five others received honourable mention. UNDA's purpose in organising such religious film weeks is to encourage and stimulate production of these films for use in television, to contribute by means of competition towards raising the technical, artistic and religious standards of such works, and to facilitate exchanges.

[1] See *EBU Bulletin* No. 25, pages 367-8, and No. 39, pages 743-4.

[1] See *EBU Bulletin* No. 44, page 500, and also the account of the international workshop on agricultural broadcasting organised by the BBC in *EBU Review* No. 54 b, page 31.

NATIONAL

AUSTRALIA

Annual Report of the Australian Broadcasting Commission. — The 26th annual report of the Australian Broadcasting Commission for the year ended 30th June 1958 stresses the fact that, regardless of the introduction of television into the two major capital cities of Sydney and Melbourne, the Commission had been conscious that sound broadcasting remained its major obligation and it had sought to further the service, particularly to the scattered community of the interior of the continent. During the year under review, another step was taken in developing assistance to children in these areas by starting the planning, in collaboration with the education authorities, of an extension to Correspondence School broadcasts to be put into effect this year.

Greater emphasis was placed on the broadcasting of material within Australia through ABC stations from Asian countries. This material runs through the whole range of programme activities in sound broadcasting and includes music, commentaries and interviews, with special reference to talks by Asians visiting Australia.

A further development in the field of sound broadcasting was the effort to improve the level of light music programmes. An officer was appointed to give specialist advice in this field, as it is felt that light music will probably become increasingly important in sound as television wins larger audiences for the types of programmes best suited to that medium.

An interesting development during the year was the Commission's decision to become a member of the Prix Italia.

An indication of the growing acceptance of the overseas service, Radio Australia, was the number of letters received from listeners. These totalled 83,123, of which 31,000 were in Mandarin and 25,000 in Indonesian. One hundred and sixty-two broadcasts were made in English by Asians and 110 given in Indonesian, Mandarin, Thai and French. A total of 475 transcribed talks, interviews and magazine sessions were issued for local broadcasting in Singapore, Malaya, Manila, Sarawak, North Borneo, Indonesia, Thailand, Japan, Hong Kong, Ceylon, Burma, Pakistan, Canada, New Caledonia and Fiji. A special function of Radio Australia is the service in Indonesian-Malay and the possibility is being examined of developing a radio school for the teaching of English in this service.

The year under review was the second year of operations of the national television service. The Commission reports that it hopes to lean heavily towards informational and documentary programmes on film, giving it the opportunity of portraying Australian life and achievements and of showing the country not only to its own people but to viewers overseas. In this connection, the report refers to the regular exchanges of films on rural and other subjects and special films for children with television organisations overseas through the EBU. Another distinctive activity of the national service was the launching of an experimental television service for schools [1].

The Commission has been authorised by the Government to proceed with establishing studios in the remaining State capitals and efforts are being made to start television in Brisbane in October of this year [2].

An interesting development of the Commission's television news activities was seen in the establishment of the British Commonwealth International Newsfilm Agency Trust of which the ABC is a foundation member [3].

In the field of programmes, music continued to play an important part in sound broadcasting but at the same time achieved several notable television successes, which included opera, ballet and recitals by Australian and overseas artists. The ABC pursued its policy of encouraging young people to appreciate fine music by again supporting Youth Orchestral Committees [4]. There was an even greater enrolment for the Youth series of concerts and some 13,400 young people between the ages of 16 and 25 subscribed to them during the year — 500 more than in the previous year. The annual Concerto and Vocal Competitions had a high number of competitors. In addition to the annual Composers' Competition, Australian composers were represented in ABC broadcasts to the extent of 6.12% of all music transmissions.

The total number of hours in sound broadcasting during the year was 433,564, an increase of 11,841 over the previous year's figure. The two television stations were on the air for a total of 4,177 hours as compared with 2,053 hours in the previous (eight-month) period. The total number of persons engaged for sound radio programmes in 1957/58, including musical ensembles, was 15,004 and for television programmes 3,146.

The statement of net expenditure for 1957/58 shows that the net figure for the year was £5,099,991, of which £3,656,253 was for sound broadcasting and £1,443,738 for television, representing an increase of £449,991 compared with the previous year.

Tenth Annual Report of the Australian Broadcasting Control Board. — The ABCB's Tenth Annual Report to Parliament, covering its operations during the year ended 30th June 1958 and incorporating its financial accounts, recalls that the principal functions of the Board are concerned with providing services by sound broadcasting and television stations in accordance

[1] See *EBU Review* No. 48 b, page 15, and No. 53 b, pages 21-24.
[2] See *EBU Review* No. 50 b, page 16.
[3] See *EBU Bulletin* No. 42, page 197.
[4] See *EBU Bulletin* No. 44, page 453.

with plans prepared by the Board and approved by the Minister, licensing commercial radio and television stations, and ensuring that adequate and comprehensive programmes are provided by commercial stations in accordance with such standards and practices as the Board considers to be appropriate.

At the end of the year under review, there were 108 commercial sound broadcasting stations in operation and 56 national (ABC) stations. The total amount of licence fees payable by commercial stations during the year was £A74,105; in the previous financial year the total amount paid was £A70,566. The 108 commercial stations in operation during 1956-57 had a total revenue of £A7,457,155, total expenditure of £A5,958,630 and a total profit of £A1,498,525.

During the year, the Board continued its regular review of the programmes and programme services of commercial broadcasting stations. Visits were made to 39 stations and one special investigation was found necessary. Some effects of television on sound broadcasting became noticeable during the year and certain stations increased the amount of music broadcast and decreased the proportion of dramatic entertainment. The endeavour to increase the daytime audience is becoming apparent in those cities where television has materially affected the size of evening audiences for sound programmes. The practice of providing news and information services and music as the essential constituents of the programmes of sound broadcasting stations operating in competition with television is becoming increasingly evident.

Discussions have taken place with the Management Committee of the Australian Federation of Commercial Broadcasting Stations over the past two years with a view to determining, as required by the Broadcasting and Television Act, suitable programme standards. The Board wished to produce a set of standards which would not only express its own views but would also have the endorsement of the Federation. Its task was made easier by reason of its determination in 1956 of Television Programme Standards [1] which were taken as a model in the formulation of Broadcasting Programme Standards. Discussions on these Standards were not completed during the year under review but they were finally adopted by the Board in October 1958 and are set out in the appendix to the Report.

As regards the employment of Australian artists, the Board feels that with a few exceptions the stations fairly discharged their obligations in this respect. It was unable to find any evidence that the importation of programmes had seriously affected the employment of Australians by broadcasting stations, although this complaint was sometimes made.

In general, the pattern of commercial television programmes took a more definite form than in the first year of operation. Drama programmes were most numerous; music had not yet established itself, although it occurred regularly as an aid or incidental to other forms of programme; crime and adventure programmes of the Western type occupied much of the peak viewing period; and the presentation of news declined considerably. All four commercial stations had commenced afternoon programmes earlier than formerly, and at the time the Report was being prepared programmes were available in Sydney from 12 noon and in Melbourne from 1 p.m. on most weekdays. Although these afternoons contained much that was of general interest, there was a well-established pattern of programmes almost exclusively of interest to women.

[1] See *EBU Bulletin* No. 38, pages 581-2.

FRANCE

New RTF Director in Algiers. — Mr. Stéphane Mallein was appointed RTF Director in Algiers last April. Mr. Mallein is also in charge of the organisation of the Second Programme (sound radio) in Algeria and will be responsible for the extensions to the television network which is expected to reach Constantine in 1961.

FRANCE-ITALY

New Programme in the Series of Franco-Italian Exchanges. — On 3rd March last, the RTF and the RAI inaugurated under the title *Young Talent* a new series of joint programmes devoted exclusively to young French and Italian singers, melody writers and instrumentalists.

The purpose of the broadcasts is not only to make these artists known to listening audiences but also to form the basis of a competition offering French prize-winners a month's holiday in Italy and Italian winners the equivalent in France. The programmes are in the form of duplex transmissions which are the result of friendly collaboration on the part of both broadcasting organisations, rather than the exclusive work of one or other. Rome and Paris have been very severe in their selection of these young beginners who are still unknown professionally. During the first months of the programmes, there have been examples of the work of 16 singers and 8 instrumentalists from Italy, and 8 singers, 8 melody writers and 8 instrumentalists from France. At the end of the series, the juries will meet to decide the winners and there will be a final hour-long broadcast with the participation of these winners.

ISRAEL

International Harp Contest. — The First International Harp Contest organised by the Israel Festival Committee and the Sam Rubin Academy of Music, Jerusalem, is to be held in Jerusalem from 15th to 30th September 1959.

Fifty-five harpists from the following countries have indicated their intention to participate in the contest: Israel (2), USA (17), Italy (10), France (11), England (4),

Holland (1), Belgium (1), Switzerland (1), Spain (2), Argentine (2), Venezuela (1), Cuba (1), Canada (1), Mexico (1). An international jury has been selected and consists of ten prominent musicians from Belgium, England, France, Holland, Italy, Spain, and the United States.

The contest will be divided into three sections : *a)* a symposium on musical subjects connected with the harp, *b)* the competition itself, *c)* gala concerts of internationally renowned artists who are participating as judges. The Amsterdam Concertgebouw Orchestra and the national radio orchestras of the RTF and the RAI have agreed to arrange a concert with the participation of the first prize winners. The RTF has also agreed to award a special prize to the French harpist who is included in the first ten winners of the competition.

Arrangements for the broadcast of the contest are in the hands of the Israel Broadcasting Service which will be glad to give its assistance to broadcasting organisations interested in a direct relay of any part of the contest or recordings for deferred broadcasts.

NIGERIA (Federation of)

First Annual Report of the Nigerian Broadcasting Corporation. — This Report is the first record of the activities of the Nigerian Broadcasting Corporation established under Nigerian Ordinance No. 39 of 1956 and having statutory existence as from 1st April 1957. Prior to incorporation, broadcasting in Nigeria was carried on by the Nigerian Broadcasting Service as a Government department. To ensure continuity this Report covers broadcasting activities from 1st January 1957 to 31st March 1958 which is the end of the Corporation's first financial year.

The period under review was one of intense activity. It was necessary to introduce entirely new organisational procedures to replace the functions previously performed for the Broadcasting Service by other Government departments particularly in the administrative and financial fields.

One of the Corporation's main policy points was improvement of programmes and it was apparent at the outset that this would require a reorganisation of staffing arrangements to permit a greater degree of specialisation. Arrangements were made to start a training scheme for staff and in July 1957 a combined training school was established in Lagos, providing courses of instruction for programme, news, engineering and administrative staff. During the period under review, 106 students from all sections of the Corporation received instruction in this school. In addition, the school was instrumental in sending 20 senior members of the Nigerian staff to England for advanced and specialist training not available in Nigeria.

Efforts were made to increase the amount of material originating in Nigeria and it is worth mentioning that by the end of the period under review 89% of the programme material in the National Programme originated in Nigeria and, in the Regions, on an average 41% (the balance being relayed from the National Programme). There was a noticeable increase in the amount of broadcasting in the vernaculars, and taking the Corporation as a whole 22 vernacular languages are now regularly employed. Additional news bulletins were introduced and altogether the News Division now broadcasts each week 74 different bulletins in English and 90 in the vernaculars. News time on the air averages approximately 26½ hours a week.

In the field of schools broadcasting, the Corporation in cooperation with the education authorities in the Northern Region mounted an experimental scheme directed to secondary schools and Teachers' Training Colleges. Similar schemes are under consideration in the Western and Eastern regions. In addition to the requirements of each Region, the Corporation is anxious to mount a national service and has made proposals to that end to the Government; a decision as to funds is awaited.

The Corporation's total establishment numbers approximately 800. More and more Nigerian staff have been trained to fill senior posts and during the period four out of seven posts of Controller grade in Programmes, News and Administration were filled by Nigerians. In these three categories 97% of the staff is Nigerian.

Total revenue expenditure for the year ended 31st March 1958 amounted to £619,076, whereof £141,865 for programmes, £195,024 for engineering, £205,720 for administration and centralised services, £59,439 for staff pensions and gratuities, and £17,028 for Governors' fees and expenses.

SWITZERLAND

School Television Experiment. — At the request of the Swiss Central Committee for School Broadcasting, the SSR organised two television broadcasts to schools in French-speaking Switzerland at the end of January. Thanks to the technical assistance provided by various bodies, the programmes reached a total of 1750 pupils in 65 classes. In addition, several teachers had sets installed for the occasion, so that the broadcasts were probably watched by an even greater number of pupils.

The purpose of the broadcast was to play a supporting role which consisted of supplying the picture, and there was no intention of substituting the television screen for the teacher. It was only one of three stages of a lesson, the first being the preparation of the pupils by the teacher, and the third being the use to which the broadcast was put afterwards, such as, for example, written and oral exercises.

Pupils' attention was held in the proportion of 97.5% in the case of a programme on Geiger, the rescue pilot, and 61% in the case of a programme about the Ethnographical Museum. Allowing for the attraction due to the novelty of the broadcasts, most of the teachers

consulted showed interest but expressed the desire to have programmes that would not last longer than 25 or 30 minutes.

A considerable amount of information was retained by the pupils. Visual impressions made most impact, particularly when the demonstration was of a systematic and diagrammatic nature. Next in importance were explanations given in the form of anecdotes. The written exercises, the drawings and the posters showed clearly that a television broadcast for schools prepared and executed according to educational requirements can add to the pupil's store of knowledge and become a living and attractive pretext for a vast educational project embracing composition, elocution, drawing, etc.

Of those consulted, 87.5% considered the subject to be a good one in the case of the programme on Geiger and 48% in the case of the programme on the Ethnographical Museum. The presentation of the first broadcast was thought to be satisfactory by 75% but only 21% were of this opinion in the case of the second. Criticism was levelled at the rapidity of the speech and the absence of a clearcut educational aim.

The suggestions forthcoming after the broadcasts testify to the interest aroused by the experiment. The desire is for short programmes dealing with well-defined subjects clearly explained, and dialogue at a cadence adapted to the receptivity of the child. The tendency should be towards live programmes to enable the pupils to participate in the events as they take place before their eyes.

UNITED KINGDOM

A New Venture in Sound Broadcasting. — The BBC is helping to make sound broadcasting history with its new live series *Asking the World*, a Sunday evening programme taking place every month from 5th April, which for the first time enables a public audience to put questions to a panel of speakers each of whom answers from his own country. The speakers themselves are in direct radio contact with each other throughout, although they are thousands of miles apart, and by means of the public address system the audience is able to hear all that is said. The speakers also hear the reactions of the audience.

The programme is not a 'quiz' but is intended to exploit public interest in Britain in foreign customs and ways of thought. The questions are therefore not designed to test the speakers' knowledge but to elicit their views on subjects of interest to thinking people everywhere, and it is hoped that the result will be an increased understanding between Britain and other nations.

On the panel for the first programme were C.P. Snow. C.B.E., scientist, Civil Service Commissioner and novelist, in the London studio; Father Paul Ruys, S. J., Professor of International Law and International Relations at the St. Ignatius Handels Hogeschool, Antwerp, from Brussels; Gunnar Heckscher, Professor of Political Science at the University of Stockholm and Conservative member of the Swedish Parliament, from Stockholm; and Norman Podhoretz, literary editor and reviewer, from New York. The audience was in London but it is hoped that later broadcasts can be made from other parts of Britain.

BBC/ITA Joint Committee to Study Report on Children and Television. — The BBC and the ITA have announced the setting up of a committee, which is shortly to hold its first meeting, to consider the recommendations and suggestions of the Nuffield Foundation report *Television and the Child* which was reviewed on pages 32 and 33 of our last issue.

The report suggested among other things that the BBC and the ITA should agree to show educational programmes for children at the same time to prevent them from switching from one channel to another to avoid instructive programmes. It also proposed a system of classification of programmes along the lines of the film certificates offered by the cinema, and notification of parents in the *Radio Times* and the *TV Times* of programmes that are unsuitable for young viewers. Violent or horror programmes should in any event be shown at a later hour. It called for further research and experimentation and drew attention to the need for programmes for adolescents.

Independent Television Religious Training Scheme. — ABC Television Ltd. is organising a training scheme for clergymen in May and June. Three courses are being arranged at ABC Television's Religious Training School in Manchester, each attended by twelve different students. The onus of selecting the candidates rested upon the Church authorities but ABC Television helped them in their choice by camera testing those who had been short-listed. Vacancies were offered only to ordained priests, some of them bishops.

Preliminary lectures and discussions centred on the history and development of television in Great Britain, the composition and character of a television audience, and television and youth. Lectures and discussions also covered the technical aspects of television—sound, lighting, design, production, camera and outside broadcast departments.

Writing for television was an important aspect of the course and candidates were asked to write television cripts and work up programme ideas. They were instructed in camera technique and in the art of appearing before cameras, and took part in dummy programmes which were seen on a closed circuit by fellow students, and telerecorded for observation and discussion afterwards.

The syllabus of the course covered the four major themes of religious broadcasting—morning services, religious programmes for youth, adult religious discussions, and the personal message of the epilogues.

LEGAL SECTION

COPYRIGHTS RELATING TO DIFFUSION SERVICES ACCORDING TO NETHERLANDS LAW

REMARKS ON THE JUDGMENT OF THE NETHERLANDS SUPREME COURT OF 27 JUNE 1958 (NJ 1958 No. 405) IN THE KINGDOM OF THE NETHERLANDS (PTT) V. BUMA

by J. VAN SANTBRINK

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Legal Adviser of NRU and NTS

The PTT Services, hereinafter called the PTT, had been cited by BUMA (Bureau voor Muziekauteursrecht) in the lower court because BUMA was of the opinion that the PTT required a licence from BUMA to relay over its wire broadcasting system programmes that were simultaneously being broadcast over the air. BUMA took the point that such diffusion constituted a new communication, namely a " communication to the public " within the meaning of Section 1 of the Netherlands Copyright Act, being a communication *sui generis* to a new audience, and hence a secondary communication to the public. This thesis was contested by the PTT, the defendants in the original action, who argued that all they did was to render technical services in which they performed no executive functions of their own; there could therefore be no question of a secondary communication to the public since, if public communication there was, it was identical with the performance given by the broadcasting corporations. It followed that there could likewise be no question of the relay constituting a communication *sui generis*. They further denied that the act in point amounted to a communication to the public at all, as the nature of the services rendered from the technical point of view implied that the PTT in fact operated a single receiving set to which subscribers were connected by wiring inside their houses, so that it would be more correct to speak of a private circle or club.

Before embarking on a discussion of the actual judgments themselves, I feel it would be helpful to dwell a moment on the peculiarities of the Netherlands legislation on copyright. The major difference between the Netherlands system and the Berne Convention is that while the Berne Convention affords protection only in the cases expressly mentioned, so that any extension of the Convention would necessitate the inclusion of new provisions in the Convention, the Netherlands Statute adopts a diametrically opposite approach : Section 1 of the Netherlands Copyright Act vests in the author an absolute right in the communication of his works to the public and their reproduction, an absolute right that can only be restricted by law. Thus, although Section 12 gives an enumeration of the meanings to be attached to " communication to the public ", this enumeration is not limitative but is merely a listing of cases cited as examples, any limitative effect being expressly ruled out by the words " The expression ' communication to the public ' shall also be taken to mean...".

It may be remarked in passing that this difference in the legislative systems in question has often resulted in the provisions of the Netherlands Act not being taken at their true value by the copyright experts of other countries, wedded as they are to the idea of a limitative enumeration as contained in the Berne Convention. Conversely, many a Dutch lawyer and judge makes the mistake of overlooking the limitative nature of protection under the Berne Convention and of reading into it all sorts of aspects that were originally alien to the Convention. This, in my view, is particularly the case in the action with which we are here concerned, in which the language of Article 11 *bis*, paragraph 1 (2), of the Brussels version was cited as an example of an interpretation of the Rome version; the latter, it was argued, did not differ in essence from the Brussels instrument, and should be construed as if protection of the system of wire broadcasting had been mentioned in terms therein.

It should also be remembered that the Netherlands has indeed ratified the Rome version of the Berne Convention, but that the Brussels text of that instrument has not yet been ratified. It is true that ratification of the Brussels text is in preparation and that a corresponding amendment to the Netherlands Copyright Act is being framed, but the fact remains that during the hearing of the actions in question between the PTT and BUMA the Brussels text had not come into force in the Netherlands.

Lastly, in a discussion of this case attention should be drawn to two decisions of the Supreme Court, namely the judgment of 3rd April 1930 (NJ 1931, p. 53) and the judgment of 6th May 1938 (NJ 1938, No. 635). In the first mentioned case it was held that a wire broadcasting exchange did not itself perform the music, but merely made it easier for its subscribers to listen in to the music performed by the broadcasting corporation. In the 1938 judgment, on the other hand, a café proprietor who operated a radio receiving set fitted with a loudspeaker in his café premises accessible to the public was held to be communicating the works so broadcast to the public, within the meaning of Section 12 of the Netherlands Copyright Act. Professor Meijers submitted in an annotation that the 1938 judgment superseded that of 1930. I shall revert to this point later.

Three separate judgments were given in the present action. The first was that of the Hague Lower Court on 5th December 1955.[1] The Court found that the PTT were at fault in having made a new performance in public, for which an authorisation from BUMA was necessary. The Court held this public communication to be a secondary communication. Finally, the Court termed this activity a communication *sui generis* to the public (on the strength of Section 1 of the Netherlands Act). The Court of Appeal of the Hague delivered its judgment on 28th November 1957 [2] after the PTT had appealed from the Lower Court's judgment and after BUMA had also lodged an interlocutory appeal. The Court of Appeal overrode the Lower Court's judgment by defining the PTT's activities as a performance, and in so doing the Court of Appeal based itself on Section 12 of the Copyright Act. The Court rejected BUMA's contention that the act in question amounted to a public communication *sui generis*; however, it found that it did amount to a secondary communication to the public. The performance was described as a " communication to the public " in pursuance of the last paragraph of Section 12:

" ' Recitation, performance, theatrical representation in public ' shall include an audition in a private circle or club to which the audience is admitted for payment, even if such payment consists in a subscription or other form of contribution."

In consequence the Court again found for BUMA, although partly for different reasons.

The PTT appealed from the above judgment to the Supreme Court. On 30th May 1958 the Procurator-General to the Supreme Court submitted that the appellants' petition should be dismissed.

In order to understand the present case properly, the reader needs to know that the Procurator-General is not a representative of the contending parties but a representative of what the French call the *Ministère public*, i.e. the person who in criminal trials is known as the Public Prosecutor. In civil cases the *Ministère public* intervenes as a rule only in the Supreme Court.

In this case the Procurator-General was Professor G. E. Langemeijer, a learned and perceptive jurist. Some of the points in the Procurator-General's submissions are worth stressing; I shall refer to them only briefly, since the text of these submissions is appended in full.

(a) According to the Procurator-General the 1930 judgment of the Supreme Court is completely superseded by that of 1938.

(b) There might be some doubt whether the public which listens to wire diffusion services is a different public.

(c) Foreign legislation does not sufficiently support the PTT's point of view.

(d) The communication to the public is based on the last paragraph of Section 12 of the Copyright Act (quoted above).

(e) Article 11 *bis* of the Brussels text might invalidate BUMA's contentions if it was a question of an " organisme ".

The Supreme Court judgment of 27th June 1958 [1] is very precise on the subject of this case. Wire broadcasting constitutes an independent public communication of a particular kind, viz.:

(i) a public communication *sui generis* within the meaning of Section 1 of the Copyright Act;

(ii) this communication is intended for a new public;

(iii) communication to the public by means of wire broadcasting is on a par with the transmission made by the broadcasting authority or the offer of gramophone records for sale.

It is apparent from the three judgments quoted above and from the submissions of the Procurator-General that all these authorities differ considerably regarding the matter in hand. From the copyright point of view, one might say that the way in which the provisions of copyright are manipulated in this case might give the impression that the subject of copyright had not been understood in all its implications.

With regard to the nature of broadcasting as defined in Netherlands law, there is a certain divergence of opinion. For my part I think it is correct to speak of a performance in public, under Section 12, *paragraph 1 (3)*, which is also the passage referred to in the contracts between the broadcasting authorities and BUMA, which are based on Section 30 (a) of the Copyright Act. It is not correct, in my humble opinion, to hold, as the Court of Appeal and the Procurator-General did, that the communication to the public of wire broadcasting

[1] See *EBU Bulletin* No. 27. p. 396.

[2] See *EBU Review* No. 49 b, p. 26.

[1] See *EBU Review* No. 52 b, p. 36. The complete text of this judgment was given in French in the *Revue internationale du droit d'auteur*, No. XXI, p. 98.

amounts to a performance in a private circle or club to which the audience is admitted for payment (according to the *last* paragraph of Section 12). The subscribers connected to the diffusion service, taken in the aggregate, do not constitute a private circle or club.

If wire diffusion laid on to a single house is not public, a diffusion service laid on to a number of houses is not public either.

I consider that it was wrong to lay the emphasis in this case on the " reception " factor, i. e. the subscriber, and not on the element of diffusion. One encounters this confusion several times throughout the judgments.

In the legal findings much is made of the technical character of the wire broadcasting system, again wrongly. For an example one might refer to the drafting of Articles 11 and 11 *bis* of the Brussels version of the Berne Convention.

In the decisions the expressions " theatrophone ", " communication of the broadcast work to the public by wire ", " communication to the public by loudspeaker " and " secondary communication " are all used alongside one another and for one another, so that it is somewhat difficult to distinguish which ideas it is intended to convey. I am of the opinion that there could be no question in the present case of the applicability of Article 11 of the Brussels text of the Berne Convention, nor of a " communication to the public by loudspeaker ". In my opinion, this is a typical case of the broadcast work being communicated to the public over wires by the " organisme d'origine ". In the interests of clarity I am going by the Brussels text of the Berne Convention (although this version is not yet in force in the Netherlands). It is worth noting, however, that both BUMA and the judicial Bench keep referring to this Brussels version, although it is not yet in operation in the Netherlands. I have already pointed out that it is not just to use the Brussels text in order to show that the Rome version, which is still in force in the Netherlands, ought to be construed with the meaning of the Brussels text. Moreover, it should be noted that the Supreme Court did not adopt the idea of the " organisme d'origine ".

I also take the view that it is certainly in keeping with the substance and general drift of the Brussels version of the Berne Convention to give the 1930 judgment of the Supreme Court (the wire broadcasting decision) a meaning of its own alongside that of 1938 (the loudspeaker decision), since the first judgment might be supported by Article 11 *bis*, paragraph 1 (2) of the Brussels version, if one proceeds on the idea of one and the same " organisme ", while the loudspeaker judgment corresponds to Article 11 *bis*, paragraph 1 (3).

One of the most remarkable points is that the Supreme Court holds the transmission of a programme diffused by the PTT to be a communication to the public in its own right and intended for a different audience, and that, while it thus rejects the idea of a secondary communication, it places this communication on a par with diffusion by means of a wireless transmission and the offering of records for sale ! The latter fact opens up undreamed-of possibilities for BUMA. Under this ruling BUMA could demand payment of copyright fees from any retailer engaged in the sale of records, since the bearing of what the Supreme Court said is that the sale of records is a public communication *sui generis* for which BUMA's authorisation is required.

As regards the subject under discussion, it can be expected that the ratification of the Brussels version of the Berne Convention and the amendment of the Netherlands Copyright Act will afford an opportunity of correcting the present judgment as regards its answer to the question whether the wire broadcasting system should be taken to be a public transmission, a communication of a broadcast work to the public over wires, or a communication by loudspeaker. In the second case, it will be necessary to decide, if indeed the law of the Netherlands has not already done so, whether this is a case of an " *organisme* " *other than the* " *organisme d'origine* ".

In the light of considerations such as these, the Supreme Court's judgment is indeed of great importance, but its effect on the wire broadcasting system will probably be of limited duration.

Submissions of the Procurator-General to the Netherlands Supreme Court, Professor G. E. Langemeijer

In the present appeal to the Supreme Court there is only one question at issue, and one which can easily be stated. It is whether the granting of a valid licence to Netherlands or foreign broadcasting institutions to transmit musical works in which BUMA (Bureau voor Muziekauteursrecht) controls the copyright, or at least the Nederlandse Radio Unie's contract with BUMA making such transmission lawful, renders it superfluous to give a further authorisation to the State to relay these performances over its wire diffusion system.

As to the arguments put forward on both sides, I consider that the case is in substance fairly simple. The fact is, in my opinion, that your judgment of 6th May 1938 (cf. *Nederlandse Jurisprudentie*, 1938, No. 635) has already settled the matter in favour of BUMA. The answer then given by your Court is all the more important in that it was given in the face of a decision reached only a short while previously, namely the judgment of 3rd April 1930 (cf. *Nederlandse Jurisprudentie*, 1931, p. 53), which as it happens deals with the very same subject as that which is before us today, namely the wire broadcasting system. The fact that the more recent judgment amounts to a reversal by the Court of its earlier decision was at once pointed out by Meijers in his annotation to the above-mentioned decree. Indeed, I cannot see what other judgment could be given. It even seems to me that your 1938 decision applies *a fortiori* to diffusion services.

It might indeed be said of a decision taken some time ago concerning the installation of a loudspeaker in a café by the proprietor, who possessed a radio receiver, for the benefit of the public frequenting his café, that at least the music was not made audible in a wider space than that for which it was intended by virtue of its legitimate transmission over the ether and the foreseen circumstances that persons would be present to take advantage of it by means of a receiving set and a loudspeaker. In the case of wire broadcasting, on the other hand, the transmission coming over the ether is

made audible in places where persons who do not wish to use a receiving set for some reason, but in any event a deliberate reason, have the upper hand. This class of persons is, in my view, much more clearly separated from that of the users of receiving sets than is the case with the class of café patrons compared with the proprietor, the persons in his household and his private guests.

I am therefore in no doubt but that the decision which is now being challenged by the State in the judgment of the Court of Appeal is the inevitable consequence of your decision in 1938. Of course, this does not mean that your Court would not be prepared to take the arguments advanced in support of the opposite view into consideration once again. I submit that you would be all the more ready to do so because this is a subject arising out of a fairly recent technical development and one which is probably not altogether finished, a development to which the Netherlands legislature has not given special attention, and whose aspects have probably not yet been accurately gauged by science. On the other hand, as has been said above, particular importance should be attached to the view adopted by your Court notwithstanding the opinion it had formed not long before.

It must at once be added that the State has certainly not advanced any arguments cogent enough to bring you in these circumstances to revise your attitude once more. The way in which learned counsel for the State has tried to answer the question has all my sympathy. I am with him in thinking that the two courts below have laid much stress on the technical aspects of wire broadcasting, whereas in reality what is important is the social element in this form of publication.

This, indeed, was the purport of Mr. Meijers's remarks in the above-mentioned annotation. Again, I concur with counsel when he says that the important question from the social point of view is whether the State reaches the same or a different audience from that of the various broadcasting corporations.

But I cannot go along with my learned friend as regards the answer to this question. It is altogether irrelevant to the question of whether the same public is reached to say that one may well imagine that those who now take the wire broadcasting programmes could also be listeners to the ordinary radio. In a sense, everybody can. But that is not enough to enrol everyone in the " radio audience ", thus leaving no room for a special wire broadcasting audience.

As I see it, the public that listens in to the radio is not composed of those who are in a position to use this medium, but of those who actually do use it. As soon as there are people who do not listen to radio but who do instead make use of the wire diffusion service, the latter no longer form part of the broadcasting audience but constitute a public on their own, hooked in to the wire broadcasting network. I will grant, however, that in the State's development of its case there is one element which, although only relatively and suppositively, might give one pause : it might well be imagined that the wire broadcasting audience is composed exclusively of persons who wish to avail themselves of the broadcast transmissions in any event, and who, if wire broadcasting did not exist, would probably use a radio receiver of their own.

If this were the case, it would have to be said that the public for the two systems of dissemination forms a single whole, within which the subscribers to wire diffusion would be a group apart only on account of the fact that they meet a need which they would satisfy in any case, by means of a particular technical system which caters to their need more efficiently. Nevertheless, I am of the opinion that we cannot decide the question before us on the basis of this supposition. We should take as our starting point the avowed fact that there are people who do use wire broadcasting but who do not use wireless broadcasting. The supposition that all these people, or almost all of them, would avail themselves of the latter alternative if the first were abolished would carry weight only if it could be buttressed by generally accepted empirical laws. This is decidedly not the case, in my opinion. It is much more likely that there are plenty of people for whom the possibility of interference-free reception tips the scales in favour of wire diffusion, not merely because they have the choice of this or wireless, but also because, in the event of their not being able to pick up broadcasts of the quality of those provided by wire broadcasting, they would rather go without the pleasures of broadcasting altogether. The fact that there are quite a lot of folk who have not got a set at all (either for wire or for wireless reception) suggests that there are also not a few for whom only a highly perfected form of broadcasting is of any interest.

The conclusion that can be drawn from the foregoing is not weakened by the way in which the remuneration received by BUMA from the Nederlandse Radio Unie under its contract with that corporation is calculated. This fee is computed in accordance with the number of persons paying the wireless licence fee, which is payable both by those who have a set of their own and by those who are connected to the wire broadcasting network. This circumstance can certainly not be decisive for the general question as stated in the primary plea, because even if this mode of calculation had been an expression of opinion on the part of BUMA that the licence granted to the broadcasting corporations to communicate BUMA's repertoire to the public implied *eo ipso* the faculty of communicating it to the public by means of the wire broadcasting system, this could still not change the substantive right, which would then retain its importance at least for the foreign programmes which the State likewise transmits over the wire broadcasting system. At best, all that could be drawn from this mode of calculation would be a conclusion regarding the tenor of the contract entered into by BUMA and the Nederlandse Radio Unie. Only the subsidiary plea relates to this more limited aspect of the State's operations. It contains, however, an entirely different contention from an appeal to the substance of the contract in the above-mentioned sense of an implied licence for public communication granted by BUMA to the PTT. In the pleadings on both sides various references have been made to the present status of the question abroad, and to the manner it is dealt with in the annex to the Berne Convention which the Netherlands has not yet ratified, namely the Brussels revision of 1948. Neither of the parties, however, has looked to this as the basis of its main argument, and, as I think, rightly.

As to foreign legislation, there is still only a small minority of countries which regulate the matter in a specific way in their copyright legislation. Among these countries, France (in the Act of 11th March 1955, section 45, last paragraph), Switzerland (amending Act of 24th June 1955, section 12 (6)), and Belgium (Act of 26th June 1951 to approve the revision of the Berne Convention at the Brussels Conference) have provisions which make the system operated by the State expressly conditional upon the grant of a special licence.

In Austria, on the other hand, there is a rather obscure provision (Act of 9th April 1936, section 17) which allows broadcast programmes to be transmitted at will, at least in certain cases. Taken together, all this seems to me to be insufficient to enable one to speak of any generally adopted approach in modern legislation. If one tried to do so, such a conception would tend to run in favour of the doctrine laid down in the judgment which is being appealed from.

As for foreign jurisprudence, the State can draw attention

to a few decisions in Canada and England; however, it is hardly possible to derive any conclusion from them, since these cases were decided on the issue of whether the transmission of broadcast programmes constituted performance in public, a question which in our country, by virtue of Section 12, last paragraph, of the Copyright Act, must emphatically be answered in the affirmative.

Lastly, as regards the Brussels Conference, one can find the record of the discussion on this subject in the " Documents " at pages 265 ff and 289 ff.

In my opinion, the Article 11bis of the Convention which resulted from this discussion does not give as much support to BUMA's case as it seems to think, since the text adopted was chosen in preference to a draft proposed by the French delegation which defined the need for a licence for wire broadcasting in much more imperative terms. The words " lorsque cette communication est effectuée par un autre organisme que celui d'origine " which were finally chosen seem to me to establish a criterion which in a case like this leaves practically the same issue open as that which subsists under Netherlands law alone.

On account of the foregoing considerations, I consider the primary plea to fail in both respects. I admit that the reasoning of the Court of Appeal which is challenged in that plea is not altogether convincing, but I hold, too, that the aspect of the problem which the pleadings seek to substitute for that of the Court of Appeal also points to the solution adopted by that Court.

The subsidiary plea, which applies only to the transmission of programmes of the Netherlands broadcasting corporations, raises an argument which I have not yet broached, namely, the obligation of the State to transmit these programmes in their entirety and without cuts. I do not see, however, what the importance of this consideration may be in the question now before us. The issue, as I see it, is whether the State makes these programmes available to a public that is entirely or partially a new public. The fact that in so doing it is shorn of the right to modify those programmes — so long, of course, as it desires to operate a wire broadcasting service — seems to my way of thinking to have no relevance to our problem. I therefore submit that this appeal to the Supreme Court should be dismissed.

EUROVISION AND ITS LEGAL PROBLEMS

Few would deny that when a Eurovision broadcast flashes on to the screen, the millions of viewers who follow it from the cosy coign of vantage of their favourite armchairs do so in blissful ignorance of all the problems that have had to be overcome in bringing it into their homes. Dozens of organisational, artistic, technical and legal problems seem to vie in complexity with one another and in taxing the imagination and ingenuity of the many experts involved. Here and there the odd viewer, fascinated by the mechanics of the broadcast that is reaching him over the ether, may have an inkling of the difficulties that production of the programme must have entailed in terms of art, co-ordination and transmission, but rare indeed is he who can guess at or even suspect the legal pitfalls which lay in the path of the modulation. And yet these pitfalls, however little may be said about them, are probably among those that it was most difficult to circumvent, for while technology, for example, is a matter of apparatus and transmission equipment, the work of human hands, the law is primarily a matter of organising the relations between individuals, and relations between individuals connote clashes of interests. This is only another way of saying that the solution of the legal problems arising out of the international exchange of programmes is mostly a matter of negotiation, which to be successful requires a far defter touch than the manipulation of even the most delicate and complicated instruments.

It is proposed to review in this article some, though by no means all, of these legal problems that beset the people in charge of Eurovision programmes, and to outline the ways in which they have been disposed of or the most promising approaches to a future solution. They will be grouped under three main heads, each divided into sub-headings on account of the variety of questions to be dealt with.

I. *COPYRIGHT*

It stands to reason that one of the considerations in every broadcast is the copyright in the works used therein unless of course it contains neither music nor literary text, neither films nor works of figurative art. The problems vary with the nature of the work transmitted.

1. " Petits droits "

All the organisations taking part in Eurovision programmes are parties (or potential parties) to a lump-sum contract with their national performing right societies, on the strength of which they are able to use the world-wide *petits droits* repertoire irrespective of the country from which the broadcast originated. The fact remains that this system, however sensible it may seem, has not been all plain sailing, owing to the fact that the *petits droits* repertoires are not quite identical in all the countries concerned. Though the differences between them may be but slight, they may nevertheless bring about involuntary infringements of copyright.

It is not proposed to go into this question at any length, for it will be too familiar to some and too technical for the others. We shall, moreover, have occasion to revert to one of its aspects later in this article. Suffice it to say that on the borderline between the fields of *petits droits* or performing rights and *grands droits* or theatrical rights, there exists a kind of no man's land of works or excerpts from works that are sometimes within and sometimes outside the control of the performing right society, depending on the mandates the music publishers have given to the society. All that is then needed to create a *bona fide* infringement of copyright is for the organisation originating the Eurovision broadcast to have chanced to use a work from this no man's land, a work which at home forms part of the performing right society's repertoire but which in the country

importing the programme has remained under the publisher's direct administration. The relaying organisation, relying on the particulars furnished by the originating station, may also take it that the work is covered by the blanket contract it has with its own performing right society and may not apply to the publisher, with whom it has no general contract, for his prior authorisation before scheduling the relay. This error constitutes an infringement of the latter's copyright, and the organisation thus lays itself open to claims that may degenerate into lawsuits.

It was incumbent upon the EBU to seek a remedy to this state of affairs, and there is every reason to believe that a solution is imminent. Under the auspices of the Council of Europe, the broadcasting organisations and the publishers have reached agreement on an international dividing line between the two areas of rights, and the chances are that the new arrangements will come into operation in the near future.

2. "Grands droits"

For all this, a very considerable repertoire of items such as operas, operettas, musicals and sizeable excerpts from dramatico-musical works will remain under the direct control of the publishers or, in the French-speaking countries, under that of the SACD (*Société des Auteurs et Compositeurs Dramatiques*). In order to spare both the originating and the relaying organisations the trouble of applying for authorisation and settling the fee in each individual case, the EBU, acting in conjunction with the publishers and the SACD, has drawn up standard contracts which, among other things, make the grant of authorisation almost a matter of course and specify beforehand what the charge for it will be. Here too complications have arisen, however, again as the consequence of the hazy line of demarcation between the respective provinces of *petits droits* and *grands droits*.

It happens in Eurovision that the originating organisation commissions a composer to write a musical work or prepare an adaptation of such a work for inclusion in its relayed broadcast. The composer, a member of the local performing right society, carries out the commission and receives the stipulated fee, the nature of the work being such that it does not fall within the repertoire of the society in his own country. But it may be that the same does not apply in the country importing the programme; there the contribution may have the distinguishing features of a work in *petits droits* as defined by the relevant authors' society or even by a decision of the competent authority, and the composer, who is expecting a remittance direct from the relaying organisation, learns that he will receive his fee for the broadcast only when the society in that country shares out the lump sum it receives from the relaying organisation. Vexed at the resultant delay, the composer will endeavour next time to prohibit the organisation producing the programme from giving the relay to those who do not pay cash down, or else he will demand payment outright from the producer in respect of each relay, irrespective of any subsequent share-out that may come his way in one or other of the relaying countries, even if he thus gets paid twice over for the same broadcast.

Admittedly, such cases are not an everyday occurrence, nor are the amounts involved ruinously high, but equity demands that double payments in respect of a relay by the same organisation should cease. The EBU is at present trying to bring some order into contracts commissioning works for Eurovision broadcasts, in order to do away with the anomaly referred to above.

3. Mechanical Rights

Although Eurovision to the man in the street is mainly a synonym for direct multilateral relays, the lawyer must also bear in mind the exchange of television programmes on film, and the filmed sequences that may be inserted in what is otherwise a live broadcast. His mind will then naturally turn to the mechanical rights brought into action by these exchanges and sequences, on account of the fact that they involve the sound or visual reproduction, or both, of works in copyright.

In the matter of mechanical rights, the EBU is fortunate in being able to deal with an international organisation which in Europe can offer a repertoire that is to all intents and purposes world wide. Besides this, the BIEM has national societies in most of the Eurovision countries which handle this repertoire on its behalf and are in a position to issue the necessary licences. It was accordingly the obvious thing for the EBU to enter into negotiations with BIEM with a view to the conclusion of a standard contract which would allow the signatories to exchange their sound and visual recordings, provided that certain limits on their use were observed. This contract has now been in operation for several years, and its territorial scope is constantly being broadened. It possesses the additional advantage that no distinction is made between *petits droits* and *grands droits*, a *distinguo* that is happily absent from the field of mechanical rights, and that generally speaking even recordings of dramatico-musical works and excerpts from such works are amenable to the ordinary arrangements.

Some difficulties have, however, cropped up in the case of television exchanges (and for that matter, sound radio exchanges as well) with the countries of Eastern Europe where the law on mechanical rights and the administration of those rights do not always tally with those in the West. Some adjustments might be called for if Eurovision were one day to extend in that direction.

4. Cinematographic Rights

There is, moreover, another legal snag about the television recording when it is intended for export. As soon as it is anything more than a mere electronic or electromagnetic recording, made by processes altogether different from those used in film making, the television recording becomes akin to the film and simi-

larly raises problems *sui generis*. In such a case the copyright in the film is involved, as distinct from the copyright in the works from which the film is taken (*e.g.* the novel, short story, play, etc). This copyright in the film is sometimes vested by national legislation in the maker (*i.e.* in the case in point, the originating broadcasting organisation) but sometimes also in the director, the scenario writer, the script writer, the composer of music specially written for the film, etc., either individually or cumulatively. This disparity in film legislation in the various countries is the source of very serious difficulties, as the President of the EBU Legal Committee, Mr. Lenoble, explained in these pages not long ago [1]. Films, which rank as works according to the Berne Convention, are subject to domestic law by the provisions of that Convention, and the vagaries of domestic law may cause them to change authors when they cross the frontier. Exploitation of these films becomes a difficult matter when people who have no claim to copyright in the country of origin find themselves promoted to the dignity of authorship in the receiving country, and on the strength of this new-found status in a position to restrain the exhibition of the film or make it conditional upon terms of their own choosing.

Only an international instrument could overcome this difficulty. Such an instrument was evolved under the auspices of the Council of Europe and was signed at the end of last year; it will probably come into force at an early date. This is hardly the place to discuss in detail the provisions of this European Agreement on the exchange of programmes by means of television films, a highly technical instrument and one that is to some extent bound up with the Berne Convention [2]. The reader will be sufficiently informed as to its purport if we state that under the European Agreement the broadcasting organisation originating the film is authorised in the absence of any contrary or special stipulation to show the film on television in the other countries which are parties to this instrument. This presumption, notwithstanding the restrictions that hedge it in, will undoubtedly do much to facilitate Eurovision exchanges on film.

II. *ANCILLARY RIGHTS*

" Ancillary rights " are traditionally defined as the rights of performers in their performances and recitals, the rights of broadcasting organisations in their programmes, and the rights of record manufacturers in their phonograms. The first two classes of rights call for special mention in connection with Eurovision broadcasts.

1. Performers' Rights

To date, programmes with talent participation have not accounted for a high proportion of the broadcasts transmitted over the Eurovision network. Doubtless the reason for this is to be sought in the fact that in matters of art popular taste varies from country to country. The language barrier, too, is not easy to surmount, and music, the international language, is not sufficiently " telegenic ". Nevertheless, talent programmes are given from time to time on the Eurovision circuit, due mainly to the Agreement entered into more than two years ago by the EBU and the three international performers' federations [1]. The Agreement provides that direct and deferred exchanges may be arranged upon payment to the performers of supplements calculated as a percentage (varying with the number of relaying stations) of the basic fee, though this does not entirely rule out the inclusive-fee system. An interesting feature of the Agreement is that it contains a definition of Eurovision, which is described as a multilateral television relay in which the organisations of at least three countries participate, one originating station and two relaying organisations. A bilateral relay is not regarded as Eurovision, and neither is a deferred relay which is given more than thirty days after the original broadcast.

This latter restriction on the automatic operation of the Agreement is also the main gap in it, as exchanges on film fall outside the international arrangements if more than thirty days elapse before they are used. Up to now it has been possible to bridge this gap by *ad hoc* arrangements or purely domestic agreements. Will the position remain the same in future? In all probability yes, unless filmed exchanges with performer participation should increase to an extent which nothing presages at the present time.

Another limitation proceeds from the Agreement, in that it covers only exchanges between countries belonging to the European Broadcasting Area. While it is thus applicable to the dispatch of programmes to the Eastern European countries, it does not cover the sending of broadcasts to the Western Hemisphere. This is a point which might be taken up again when direct relays across the Atlantic become a technical possibility.

2. Rights of Broadcasting Organisations

Eurovision broadcasts are hampered at the present time by the fact that the broadcasts in themselves enjoy no international protection and that neither the originating nor the relaying organisations can do much to restrain the various uses to which their programmes lend themselves. The promoter of a sporting event in which Eurovision is interested thinks twice about allowing it to be televised if he knows that the broadcast may be shown on the cinema screen or filmed " off the air ", *i.e.* from a receiving set, or that there is a chance that it may be relayed by transmitters not mentioned in the contract, without his getting a penny from any of these uses and without the broadcasting organisation he has

[1] See *EBU Review*, No. 53b, p. 16.

[2] A commentary was published in the *Droit d'Auteur*, March 1959.

[1] For the text of this Agreement, see *EBU Bulletin*, No. 42, p. 113.

contracted with being able to prevent them. His reluctance will be all the greater in that he believes that these uses may actually involve him in losses by keeping spectators away from the premises or grounds where the event is being held, by detracting from the value of the cinema rights which he intends to sell to another buyer, or by extending the broadcast to an area where he has valid reasons for not wishing it to be received.

The EBU has for many years been trying to secure the adoption of an international Convention that would, *inter alia*, afford protection against the re-broadcasting, fixation and public performance of broadcasts. So far these efforts have not been crowned with success, but there are indications that a Convention open to all countries will be drawn up and signed by a Diplomatic Conference within the next two or three years. In the meantime a specifically European treaty limited to the protection of television broadcasts would not be devoid of value for the exchange of programmes and might do much to stimulate them.

At the national level a few organisations have had their wishes met by their parliaments. Quite recently Acts have been passed to protect the broadcasts of the BBC and ITA in the United Kingdom and the RTF in France. In Germany, where the most recent Copyright Bill sets up a system which is favourable to the protection of broadcasts, lawsuits are now in progress against cinemas on account of their unauthorised showing of the football matches from Stockholm on Eurovision to a paying audience. In the absence of any specific protection the German broadcasting organisations may perhaps be able to secure judicial recognition of the cogency of their arguments on the strength of the copyright protection for photographs and the principles of unfair competition [1]. The Swedish Bill also appears to confer protection on broadcasts. Thus, little by little, the situation in Europe is evolving in a manner which is favourable to the conclusion of a diplomatic instrument laying the groundwork for reciprocity.

III. *OTHER RIGHTS*

Apart from copyright and ancillary rights, Eurovision also has to contend with other interests based on ordinary civil law. These are mainly rights of property or " quasi-property " which are asserted by claimants who fear that the exchange of programmes will involve them in a certain loss of earnings.

1. Rights in Sporting Events

A glance at Eurovision statistics will show that outside broadcasts of sporting events stand high on the list. Those who envisaged Eurovision as an additional medium for cultural expansion may deprecate this fact, but the lawyer has to take the facts as he finds them and apply his ingenuity to the problems that exist. The fact is that the transmission of sporting events on Eurovision is full of legal snags.

Admittedly, so long as the event takes place on the public highway, as in the case of a motor race or a cycle race, it is now possible to rely on firm precedents which deny the possibility of exclusive appropriation and allow television to have access to the event even without the consent of the promoter. This, at any rate, is the substance of the decisions of the German and Italian judges which were reported in these pages at the time. The situation is still favourable if the broadcasting organisation is content to shoot only short " current events " sequences, since it can then claim the " right to news ", at least in those countries where such a right is recognised in the Constitution, the law of the land or the decisions of the courts. Any sporting event of interest to Eurovision is by definition an event of public interest to which news media ought to have access in order to gather the material required for their work.

But the situation becomes more complicated if the event is held on closed premises and if the broadcasting organisation desires to put the whole of the match or contest, or an excerpt amounting to more than a mere news flash, on the air and feed it into the Eurovision network. It then becomes necessary to negotiate with the promoter, and some very complex contracts may be the result.

According to a decision of the Administrative Council of the EBU, negotiations looking to the Eurovision of sporting events of international importance must be conducted by an EBU delegation. Such a delegation negotiated for the transmission of the World Football Championships in 1958 and is currently bargaining with the Olympic Committee responsible for the organisation of the 1960 Olympics in Rome. The delegation of course includes representatives of the broadcasting organisation in the country where the event is being held, but it is also assisted by legal advisers who are then responsible for drawing up the contract. In the latter connection the Administrative Council has in the light of experience defined various principles to which the contract should conform, the main one being that the geographical scope of the authorisation should be precisely defined. It would be quite improper if, once arrangements for the Eurovision broadcast had been made, for a fee which is often very high, the relaying organisations were obliged to seek the permission of some national sports federation in their own country, a federation which, possibly fearing the repercussions of the relay on the local matches being played on the same day, would be liable to withhold such permission and thus narrow the geographical scope of the authorisation originally given, without any corresponding reduction in the fee. Another point to be watched is that the promoter must give Eurovision an indemnity against claims by third parties arising out of the broadcast,

[1] Cf. in this connection the excellent article by Professor Ulmer in *EBU Review* No. 53b, p. 35, and the item published below on page 29.

for the organisation contracting with the promoter cannot expose itself to the risks which might arise out of claims by the players (*e.g.* founded on the *jus imaginis*, or " right to one's picture ") or by stadium proprietors. Lastly it is important to specify exactly what rights have been purchased, to avoid disputes with other buyers of rights which may conflict with the television rights. The promoter may have sold the cinematographic rights to a third party, for instance : to what extent will this assignment affect the right, which is almost essential for programme exchanges, of making kinescopes for the purpose of deferred relays ?

All these problems must be carefully disposed of before the broadcast is made. But since they recur in every transaction relating to the Eurovision of a major sporting event, it is perhaps not unduly optimistic to hope that one day some kind of standard contract may be evolved, which would make it easier to draw up the individual contract and smooth the course of the negotiations.

2. Rights in Musical Editions

Though there may not be many of them, broadcasts of musical or dramatico-musical works are sometimes given over the Eurovision network. Quite apart from the problems of copyright or performers' rights, this raises a question of the use of the printed edition of the work or " musical materials " as they are called, which are not to be had otherwise than on hire. The organisation originating the programme then has not merely to take this material on hire, but also to compensate the publisher for the loss of earnings he fancies he will suffer on account of the fact that he will have fewer chances of renting the same materials out to each of the relaying organisations for broadcasts of their own.

The EBU has been able to solve these questions by drawing up two standard contracts in agreement with the international organisation of music publishers, and these contracts are now operative over a fairly wide area. As in the case of the performers, relays and the dispatch of recordings attract supplementary fees, calculated on the number of relaying stations and the basic tariffs. It should however be noted that to each contract is appended a list of countries to which the programme may not be sent without the express consent of the publisher. The countries on this list are those in which the broadcasting organisations do not, in the opinion of the publishers, afford sufficient safeguards against the wrongful use of the programmes they receive or against copyright infringements. However, efforts are being made on both sides to reduce this list, particularly as regards the European countries.

* * *

It was stated at the beginning of this article that the intention was to review only some of the legal problems raised by Eurovision. While mention has been made of the more important ones, we have intentionally omitted those which can only be explained in technical legal terms, which would have detracted from the original purpose which was to write an article for the general public. Besides, not all of the problems have yet been examined by the Legal Committee of the EBU, and it would have been premature to anticipate its findings.

In the same way, nothing has been said of the problems arising out of the relations between the organisation originating a Eurovision programme and the organisations that relay it. All these matters—the reimbursement of the originating organisation for the supplements paid to performers and music publishers, the precise demarcation between the relayed programme and the relay station's own programme, possibly a commercial one, and the conditions governing the transfer of a television film or telerecording—are all purely internal questions that concern only the organisations themselves.

Notwithstanding its shortcomings and its voluntary omissions, it is felt that if this article comes to the notice of a viewer who is not content with remaining a purely passive " watcher " of his set, it will give him a glimpse of the complex legal problems, the solution of which conditions the degree of pleasure he will derive from it.

In **Part A (Technical) of E.B.U. Review No. 55** you will find:

to mark the occasion of the fifth anniversary of Eurovision: a message from the President of the EBU, Sir Ian Jacob; an introductory article by E. L. E. Pawley, Chairman of the EBU Technical Committee, on the role of the Technical Centre in Eurovision; an article by M. J. L. Pulling, Chairman of EBU Working Party L (international television relays) on the evolution of Eurovision from the technical standpoint; an article by H. A. Laett and E. Castelli on the technical problems raised by international television relays;

information on the technical activities of various sound and television broadcasting organisations, including: the setting up of a VHF sound broadcasting transmitter network in Belgium, the wire-broadcasting system recently inaugurated by the RAI, the new sound and television OB vehicles in the Netherlands, the NTS centre for post-synchronising television films, and Associated Rediffusion's studio at Wembley;

the situation in the long- and medium-wave spectrum in Europe at 1st May, 1959;

an account of the sixth plenary assembly of the C.C.I.R.

NEWS AND INFORMATION

FRANCE

Protection of Broadcasts. — Under this title, we reproduced in our last number (page 42) Article 4 of Ordinance No. 59-273 of 4th February 1959, according to which the RTF's broadcasts are henceforward protected against uses not authorised by its Director-General. We did however point out that there was in our opinion a printer's error in the *Journal Officiel*, since the text of Article 4 as printed gave protection to the RTF's broadcasts against the retransmission " *of* recording ", while the meaning of the provision indicated that it should have read " *the* recording ".

We are glad to note that this error has in fact been put right by a rectifying Ordinance in the *Journal Officiel* of 8th March 1959. It follows that Article 4 of the Ordinance of 4th February 1959 henceforward protects the RTF's broadcasts against " the retransmission, by wire or by wireless, the recording or the reproduction in any form whatsoever of all or part of a broadcast transmission for the purposes of performance in public, either free or for valuable consideration ".

GERMANY (Federal Republic)

Protection of Broadcasts. — It was announced in the last issue of the *Review* (p. 43) that the *Nord- und Westdeutscher Rundfunk Verband (NWRV)* had won the case it had brought in the Hamburg *Landgericht* against the proprietor of a chain of cinemas who had shown to a paying audience the plaintiff's broadcasts of the World Football Championships relayed from Stockholm. The judgment has since been promulgated, and a summary of the grounds adduced for the decision appears below. [1]

The defendant operates newsreel cinemas in several large cities in the Federal Republic of Germany, and in June 1958 he projected in several of his cinemas the broadcasts of the World Football Championships, making a charge of DM 2.— for admission. Although his attention had been drawn to the unlawful nature of this action before the writ was issued, the defendant had persevered in his intentions, chiefly on the strength of an Order issued by the Postal, Telegraph and Telephone Ministry on 25 July 1958, which gave all television licence-holders the right to use sets for commercial purposes, stating however that " this general authorisation shall not affect any claims based on copyright ". [2] Seeing that this exchange of correspondence was fruitless, the plaintiff initiated a lawsuit in the Hamburg *Landgericht*, claiming that the defendant's public exhibition of television broadcasts infringed a copyright belonging to the plaintiff and constituted an act of unfair competition.

On the first ground, the plaintiff's case was that its broadcasts consisted of pictures which were protected under the Copyright (Photographic Works) Act, especially Section 3 of that Act, applying to works produced by a process analogous to photography. In the plaintiff's opinion, fixation of the work in a material form was not essential so long as the picture was produced with the aid of technical installations that are likewise used in photography. The protection claimed by the plaintiff belonged to it because the cameramen were its employees or at any rate had assigned their rights to the plaintiff under the general terms and conditions of their contracts of employment. Section 15 of the Copyright (Photographic Works) Act gives the copyright holder the exclusive right to cause his pictures to be shown by means of technical or optical installations; it followed that this exclusive right covered projection in cinemas and like places.

Furthermore, the defendant's acts infringed the copyright in the commentaries accompanying the pictures, which constitute a literary work within the meaning of the law of copyright. Pursuant to the contracts of employment, copyright in these commentaries also belonged to the plaintiff.

Lastly, the latter argued that the defendant's acts amounted to unjust exploitation of the work of others. He appropriated broadcasts to his own use without paying the usual rental charge for cinema newsreels proper, and thus caused trouble for the plaintiff in its dealings with the organisers of sporting or artistic events who, in the knowledge that broadcasts of their events would be seen in cinemas where a charge was made for admission, were liable to demand a higher fee for the television rights to offset any loss of earnings as the result of a falling-off in the " gate " or box-office receipts.

In the course of the action the defendant gave an undertaking to restrict his uses of the plaintiff's broadcasts to current events and not to use other broadcasts, e.g. artistic or cultural programmes or motion pictures. The plaintiff accordingly limited his prayer to an application for an injunction to restrain the current events and news items given on television from being shown in cinemas.

The defendant in his pleadings denied that the plaintiff's visual reporting amounted to photographs; in his view, all that were involved were literary works to which

[1] The judgment was promulgated on 15 March 1959 and not on 18 March 1959, as was wrongly announced in the last issue of the *Review*.

[2] See *EBU Review*, No. 51 b, p. 29.

Section 18 (3) of the Copyright Act applied, under which the reproduction of " news of the day " was allowed without authorisation. The plaintiff's reporters similarly possessed no copyright, since their commentaries related only to everyday events to which no protection attached. In addition the defendant relied upon the special Act of 30 April 1936 which made it lawful to use works in copyright for the purpose of cinema newsreels.

The defendant also took the point that the exhibition of television broadcasts in public was expressly authorised by the Postal Administration in virtue of the Order referred to above, for it was inconceivable that the plaintiff, after collecting a licence fee from the owners of television receivers for the use of the set, could yet deprive them of the benefits of the set by forbidding them to use it. The saving of copyright claims in the above-mentioned Order did not affect the rights claimed by the plaintiff, since it manifestly referred to copyrights proper as administered by GEMA and not to those rights which the plaintiff was asserting.

The plaintiff's claim further infringed Article 3 of the Constitution of the Federal Republic of Germany, which established the principle of the equality of all citizens before the law. Seeing that the plaintiff did not prohibit the public reception of television broadcasts in cafés, hotels, restaurants, etc., it could not enforce such a prohibition in the case of cinemas.

As for the unfair competition alleged by the plaintiff, the defendant pointed out that no competition existed between the cinema and television. He was not exploiting the work of others, since all he did was to act in accordance with the licence granted to him by the Postal Administration.

The Court granted an injunction restraining the defendant in future from exhibiting in public the visual reports of current events and news items transmitted by the plaintiff, basing its decision on the following grounds :

1. Although it might be held that television images are photographs within the meaning of Section 1 of the Copyright (Photographic Works) Act, it was not necessary to decide that point, as it seemed to be beyond question that such images were in any event works produced by a process analogous to photography within the meaning of Section 3 of that Act. The methods employed were similar for both types of works.

2. This being so, the plaintiff was entitled to an " ancillary right " *(Leistungsschutz)* which conferred less extensive prerogatives than a copyright *stricto sensu* but on the other hand did not imply any element of originality, e.g. a personal selection of shooting angles, lighting effects, etc. It was therefore beside the point that the plaintiff's pictures were simply reproductions of news events, because all productions analogous to photography came under the protection granted by Section 3 of the Act irrespective of artistic quality or originality.

3. In consequence, the defendant could not rely on the exception provided in Section 18 (3) of the Copyright Act because this provision was not carried over into the Copyright (Photographic Works) Act and, being a clause in derogation of protection, it could not be applied by analogy either. This reasoning was all the stronger because there was a fundamental difference between works properly so called and photographs, the latter being protected, as stated above, by a lesser right than copyright, but one not dependent on their artistic merit.

4. The plaintiff's claims were not defeated by the licence granted by the Postal, Telegraph and Telephone Administration, since the express saving of copyright in that licence could be cited not only by proprietors of copyright *stricto sensu* but also by the holder of an " ancillary right ". The Post Office licence referred only to the technical operation of a receiving set, and left intact all the rights protected by legislation on copyright and cognate rights.

5. Article 3 of the Constitution of the Federal Republic of Germany, which proclaims equality before the law, was not infringed by a plaintiff which limited its prohibition to the projection of its broadcasts in cinemas and did not interfere with the showing of broadcasts by café owners, restaurant and hotel keepers and the like. In the opinion of the Court the principle of equality held good only if the circumstances were the same, and this was not so in the two cases under review. Projection in cinemas involved a much greater number of spectators than performance of broadcasts on a small screen in public, the admission charge in cinemas was not comparable with the terms on which tavern keepers, etc., showed broadcasts, and in any event the defendant had led no evidence proving that the plaintiff connived at projection on a large screen in cafés, hotels and restaurants.

6. The Act of 30 April 1936 to facilitate filmed news reports was not applicable in the present case. It related only to works in copyright which were played or performed during the filming of news events, but it did not apply to the actual pictures which resulted from such filming. If this were not so, it would follow that any newsreel producer could simply copy the news footage put out by another producer.

7. The Court also found that the defendant had committed an act in contravention of the principle of fair competition. That competition existed between television and the cinema had already been established by the recent decision handed down by the Hamburg Court of Appeal in the *Kleine Leute — Grosse Reise* case [1]. Admittedly, exploitation of the work of others was not of itself contrary to public policy if it was not accompanied by aggravating circumstances, but in the case in

[1] See *EBU Review*, No. 53 b, p. 41.

point such circumstances existed. The distinguishing feature of television news broadcasts was their rapidity, which gave the television organisation an advantage over the newsreels in the cinemas, but it was precisely that advantage that the defendant was appropriating by using the plaintiff's broadcasts. This being so, he was exploiting the latter's work under special conditions which warranted his behaviour being held to be an act of unfair competition.

This judgment is not final, and is subject to appeal.

Reception of Broadcasts in Hotel Rooms. Judgment of Berlin Landgericht. — The reader may recall that the former Reichsgericht, in a judgment delivered on 11th June 1932, ruled that the public reception of radio broadcasts was only a prolongation of the broadcast and the logical conclusion of the transmission, and hence did not entitle the copyright holder to collect a further fee for public performance. After the war, probably under the influence of the new language of Article 11 *bis* (1) of the Berne Convention as revised in Brussels, the German courts modified their attitude, and the Berlin *Landgericht*, called upon to judge a case involving the problem of the public reception of television broadcasts, declared in a decision of 16th June 1955 that for this the author's consent was required as it constituted a public performance independent of the broadcast so received. This judgment was analysed in the *EBU Bulletin*, No. 33, p. 537.

The same Court recently had on its docket an action brought by GEMA against the proprietor of a hotel where radio and television sets had been installed in the rooms, some 150 in all, to enable patrons of the hotel to see and hear sound and visual broadcasts. In its statement of claim GEMA submitted that this was not a question of a private performance because the patrons of the hotel were constantly changing, that there was no family relationship between them or between the patrons as a whole and the hotel keeper, and that the latter, by enabling a constantly changing body of viewers and listeners to receive programmes on the air, should be held to be the organiser of a public performance of the broadcasts. The defendant took the point that, notwithstanding the constant turnover in his clientele, each hotel room represented the domestic circle of the client occupying it for the time being, and that there was accordingly no question of a performance in public. He referred to the example of a patron who brought his own portable receiver into his hotel room; when he turned it on he was certainly not responsible for anything more than a private performance.

Giving judgment on 6th October 1958, the Berlin *Landgericht* found for the defendant and awarded him his costs. In the opinion of the Bench, broadcast reception is undoubtedly the seat of a new performance in its own right and as such attracts a fee for public performance in so far as it can be held to have been given in public. The Court also found that the receivers were installed in the hotel rooms with a view to profit because they would increase the chances of letting the rooms. But, as the defendant had argued, the Court was of the opinion that merely making television or radio receivers available to the patrons did not in itself constitute an act restricted by copyright; only performance itself, which depended entirely on the patron, could justify the author's intervention, and only then if it was given in public. The performance effected by the hotel resident, however, is a private one because it is confined to his bedroom, and thus it falls outside the range of copyright. This situation is not changed by the fact that the various clients of the hotel are receiving the same transmission at the same time, in view of the fact that the sum of receptions in private will never constitute a reception in public.

GEMA has lodged an appeal against this judgment with the Berlin-Charlottenburg *Kammergericht*.

NORWAY

Protection of Television Broadcasts. — Under the authority granted by section 11 of the Broadcasting Act of 24th June 1933, as amended on 12th May 1939, 25th June 1948 and 18th March 1949, Norsk Rikskringkasting has recently issued new rules to govern the possession and use of television receivers as from 1st January 1959.

Among these rules, mention may be made of those in section 9, the substance of which is as follows :

It is forbidden to use a television receiving set without the special permission of Norsk Rikskringkasting for the purpose of recording all or part of a television broadcast, of applying these programmes for " industrial use " or of showing them in public or in semi-public gatherings. This prohibition does not apply to the use of television receivers in boarding houses, hotels, restaurants, cafés, etc., in offices and meeting rooms where no charge is made for admission, or to the giving of television programmes for the benefit of wage earners or salaried employees during working hours. The distribution of television programmes over telephone wires or over the air requires a special authorisation from Norsk Rikskringkasting in each individual case.

Persons using television broadcasts in any way involving copyright are required to pay the corresponding fees themselves, in accordance with the Copyright Act of 6th June 1930 and the Photographic Works Act of 11th May 1909. It likewise rests with them to make the payments required under the Act of 14th December 1956 setting up a fund for performing artists, which was reported in *EBU Bulletin* No. 33, p. 539.

The over-all effect of these rules is to give the television broadcasts made by Norsk Rikskringkasting protection in future against being used without the express permission of the originating organisation.

UNITED STATES

Legality of the Fund Set Up by the A.F. of M. — It has frequently been mentioned in these columns that under the various collective agreements between the American Federation of Musicians (A. F. of M.) and the motion picture and record industries, certain royalties are paid by these industries into a fund, the resources of which, running into many millions of dollars, are used for welfare purposes, chiefly in the interests of unemployed musicians. The legality of the fund has been challenged on various occasions, particularly in the cases reported not long ago in this publication [1], in which groups of musicians claimed that the royalties paid into the fund were in fact a component of wages which should be paid out to them direct. The industry, for its part, quite predictably argued that the payments into the fund were illegal, as was the fund itself.

Since 1955 the U.S. District Court has been the scene of actions brought by shareholders in record firms to prevent further payments from being made and to have the record manufacturers enjoined from making further contributions to the finances of this institution. The main argument was that the Music Performance Trust Funds had been established contrary to Section 302 of the Taft-Hartley Act, which makes it illegal for an employer " to pay or deliver, or to agree to pay or deliver, any money or thing of value to any representative of any of his employees who are employed in an industry affecting commerce ". The plaintiffs claimed that the Trustee of the Trust Funds was " a representative of the employees ".

Giving judgment on 25th February 1959, Judge Gignoux, of the U.S. District Court, came to the conclusion that the administration of the Fund was entirely independent of the influence and control of the A.F. of M. and that its functions were guided exclusively by the public interest. The Court's investigations had revealed that no part of the moneys accruing to the Fund went to the A.F. of M. or its officials, nor could those moneys be used according to the wishes of the union or its leaders. Accordingly there was no infringement of the relevant section of the Taft-Hartley Act, and judgment would therefore be given for the defendants, with costs.

This judgment is reported in *International Musician*, the official organ of the American Federation of Musicians.

[1] Cf. *EBU Bulletin*, Nos. 38, p. 551, 42, p. 174, and 44, p. 468.

BOOK REVIEWS

Radiodiffusion, télévision et droit d'auteur, by François Hepp. Les Editions internationales, 47 rue Saint-André-des-Arts, Paris VI. 1958.

Mr. Hepp is a man of Moses' ilk : he has led UNESCO to the Promised Land of the Universal Copyright Convention. He has even gone one better than the patriarch of Israel, for he has outlived the achievement of his great design. And that is not all : having retired from UNESCO, he has not yielded to the temptation of resting on his laurels, but has signed up again in the band of independent *savants* who are at grips with the divers problems of copyright. This indefatigable ardour is a model for us all. Mr. Hepp has not forgotten that for many years he worked as a free-lance, burdened with all the responsibilities that such a status entails; now that he has reached the age-limit for international officialdom, he returns by inner discipline and by inclination to his earlier research, and the product of his labours is the substantial volume I propose to discuss.

To go by the title one would expect this book to be a searching, if not an exhaustive, treatise confined to a narrow subject, *viz.* the incidence of broadcasting and television on copyright. Instead, Mr. Hepp has brought together in book form a dozen essays, all of which are concerned with literary and artistic property, and hence also with broadcasting and television, these being regarded as particularly important and " business-like " methods of turning intellectual creations to account. The author has, however, touched upon other subjects too, among them the right of translation, the meaning of the expression " literary and artistic works ", the unknown audience, and copyright as a form of invisible property. In a word, we have before us not a work whose chapters are organically linked one to another, but an attractive and varied collection full of thought-provoking ideas on several subjects culled from the field of copyright.

A lengthy introduction assembles under four " discourses " a number of general concepts and preliminary distinctions. Let us consider, to start with, the idea dear to Mr. Hepp and others that copyright is a natural right, one that is merely confirmed and sanctioned by law. Here, I feel, it might be well to arm ourselves with a little more precision. As the law stands at present, the author of original literary or artistic productions is the uncontested master of his work until such time as the latter is divulged to the outside world in one way or another, and until the ordinary public can take cognizance of it. This communication to the public, too, does not mean that the author is dispossessed of it. By a deliberate act he has consented to the exploitation of his work in a specified form. *In fact* he has thereby delivered up to his fellow men the product of his intellectual activity; but *in law* he retains all the rights and powers he has not expressly relinquished as the result

of his initial decision. I do not think that this measure of conservancy—the need for which is beyond question—can be held to proceed from a natural right. In this case the intervention of the law-maker constitutes the right and does not merely acknowledge its existence. On the other hand, to deny the author's *initial* right to authorise the first divulgation of his work would be to drive a coach and four through one of the essential attributes of human personality. In calling copyright a natural right, Mr. Hepp indeed sets out from unimpeachable premisses, but I am not so sure that he has not gone too far in his inferences from those premisses. This trend to embody copyright in its widest sense in the charter of human rights is not, in my view, in keeping with the nature of things, once the work has left the author's personal sphere. But this is a purely academic quibble; opinions may differ on the basis of protection, according as one considers the author's first act of disposition or those that follow it, but all are unanimous that these all fall within the purview of the law.

The more specialised articles which follow the four introductory talks contain a number of sidelights in which Mr. Hepp demonstrates to the reader his twofold competence as a lawyer and a businessman. In variations on the word " art " he points out that this term has several meanings : a general, theoretical sense covering activities centred on aesthetics and two more limited meanings current in everyday life, the first applying to the creators and inventors of artistic forms and the second to the artistic makers of a form which is assigned to them. This is a distinction which assures the authors of literary and artistic works a place apart at the top of the hierarchy, while the technicians who join physical and manual activity with efforts directed to reproduction or interpretation must be content with a more humble position, or perhaps just a different position that does not come within the field of copyright. As examples of these productions devoid of the creative element Mr. Hepp cites the arts and crafts, artistic manufacturing (*e.g.* porcelain and tapestry), decorative art, dental art and capillary art. I confess that I am more than wary of these judgments of values and this distributive justice on the pigeon-hole system. In reality man does not create anything, if " create " is taken to mean bringing something out of nothing. This simple observation should incite us to caution when assessing the degree of artistry in a work centred on aesthetics (his general definition of art). Why should decorative art be undeserving of copyright protection ? Is a brilliant coiffure not a work of art in its own right ? If not, I cannot see why. Every activity in which the personality of the person performing it is given expression may produce results worthy of protection under the law of copyright. The decisive factor is less the nature of the work than the originality or, better, the individuality that shines through it.

I rather fancy that Mr. Hepp may have established his bipartite division of original works and technical and reproductive performances partly to mollify the authors, who have long been stressing their creative role in contrast to the purely interpretative functions of the performer. The composer is always one step ahead of the performer in time, and he often takes precedence in merit too. But to say that the author is always a creator and that the performer can never be a creator is begging the question, in my opinion. A painter who paints a portrait is just as much an interpretative artist, and yet he is unhesitatingly included among the ranks of the creative artists. Why ? Could it be that the " interpreter " must always base his work on a pre-existing work from the hand of an author, and not on a person or an object taken from the world around him ? The " raw material " of the performance or " interpretation " could hardly be the deciding factor, for it does not determine the value of the performance. But if the painter who reproduces a landscape or the sculptor who models a bust are creative artists, how then can we deny this title to the performer of a musical composition ? I am perfectly well aware that there are hosts of musicians who have not a whit of virtuosity in them, but that does not weaken my argument based on a high-class performance, since the explanation of copyright lies in works which gain a hearing and a following in the community. If this is the case, the authors' contention, which Mr. Hepp endorses, that performers are never and on no account creators in their own right does not strike me as being correct. All that one can—and must—say is that the performer is always second in time, whether he be working from a model or interpreting a work. Consequently I cannot find much fault with the idea of using the expression " rights ancillary to copyright " for the rights claimed by the performers in their renderings of musical works. They are ancillary because the performer inevitably follows the author, and because, as Mr. Hepp very pertinently points out, there is a certain *de facto* kinship between the former and the latter. I personally have no particular preference for one form of words or another. If the term " ancillary rights " is discarded, I am quite prepared to drop it and adopt whatever is suggested in its place. (To tell the truth, I have never been able to suggest anything that would do as well.) As to the merits of the problem, Mr. Hepp has a wealth of apposite remarks to make; he perceptively delineates the characteristic features of the performers' position, the initial performance of whom, remunerated as it is by fee, does not call for intervention on the part of the legislator on the national or the international level. On the other hand, if this initial performance lends itself to secondary uses and performances that are not covered by the fee, the performer must receive a supplementary fee. Here the analogy with copyright is obvious and indeed natural.

One of the most interesting essays in Mr. Hepp's book is devoted to those recordings which were styled " ephemeral " by the Literary and Artistic Conference in

Brussels, which guardedly gave them its blessing in Article 11 *bis* (3) of the Berne Convention. The author gives a lucid commentary on this provision, and one again perceives the businessman behind the legal theorist. We learn, for example, that certain stations use such recordings for as much as 80 or 90% of their programmes. And Mr. Hepp considers, as I think rightly, that in this connection one cannot be over particular about applying the strict principles of copyright. To put it better, the national legislatures must be left the right to formulate *ad hoc* provisions which will slightly limit the protection. The expression " ephemeral recordings " is not inelegant and it conveys the picture; but it is still open to criticism. True legal language seeks precision rather than style. It is doubtless true that the recordings made by broadcasting stations for their operational requirements are often ephemeral, *i.e.* of very short duration; but the text adopted in Brussels does not require the countries to remain within a certain time limit. Each may construe the word " ephemeral " as it sees fit, at the risk of emptying this term of what the theologians, when they speak of dogma, call the essential content. Mr. Hepp, who is at pains to stress the aim of the broadcasters, would like to replace the word " ephemeral " by the more prosaic word " auxiliary ". He is not altogether wrong. The recordings for which the Brussels Conference sought to establish a special exemption must always be made, first, with the broadcasting organisation's own facilities and, secondly, for the purposes of its own broadcasts. The use of the word " auxiliary " necessarily implies these two requirements, which are not susceptible of flexible application. Will it be objected that a commercial record is also an auxiliary recording in relation to the broadcast? I would say no, because the record was not made with that purpose in view; what is auxiliary, therefore, is not the recording itself but merely, and that quite accidentally and fleetingly, the record or tape on which it is carried. The auxiliary recording is thus clearly the recording which is made with a view to a later broadcast.

If we adopt Mr. Hepp's terminology, the effect will be twofold : (1) to limit to the minimum, *i.e.* to one, the broadcasts that can be made from the recording; and (2) also to reduce to the minimum the time that elapses between the making of the recording and the broadcast. As this is an exception, this way of strictly circumscribing its effects is pretty much in keeping with orthodox legal thinking. But it is to be expected that the broadcasters, as the beneficiaries of ephemeral or auxiliary recordings, will endeavour to get the most out of the facility thus obtained. And here we must, I think, admit that Mr. Hepp and the authors, who do not intend to stand for more than a single broadcast, are perhaps a little too categorical in view of the text of the Convention, and a bit too severe, in view of the needs of everyday operations. One only has to think of the administrative and technical habits of the studios (*e.g.* repeat performances of certain shows in a second programme or from a special transmitter) to realise how desirable it is to have a more flexible code. On the other hand, any exaggeration in the opposite direction would be equally wrong, not to say an infringement of the Convention. The recording should not be scheduled in an entirely new transmission by comparison with the original use (and *a fortiori* not in more than one such transmission either), and the period between the making of the disc or tape (almost always a tape) and the last broadcast should certainly be a limited one. Mr. Hepp concedes a " very brief " period, and that seems fair enough.

It is as yet too early to assess the true implications of the facility granted by the Brussels Conference when it permitted national legislators to exempt ephemeral recordings, whether we lend an ear to the broadcasters or whether we listen to the authors at whose expense it was granted. The intention was reasonable enough. But it is enlightening to note that, when it was bringing its Act up to date in 1955, a country like Switzerland did not feel obliged to promulgate rules applying to ephemeral recordings, which continued to be subject to the normal law on copyright in the Helvetic Confederation. Likewise, the new French Act on Literary and Artistic Property of 11th May 1957 does not give any special treatment to these recordings either, except in the case of broadcasts of national interest or of an historical character, which may lawfully be embodied in recordings destined for the official archives.

I shall end where I ought to have begun, by picking a friendly quarrel with Mr. Hepp about his title. Why should he distinguish between " *radiodiffusion* " and " *télévision* ", as if these terms covered two different things? The International Literary and Artistic Association, which is honoured to have our author among its stalwarts, has always maintained with a fine feeling for language that " *radiodiffusion* " includes both sound radio and television. It is true that television developed much later, and that people gradually fell into the habit of using the word " *radiodiffusion* " with the adjective " *sonore* " understood. Even today we have in France the Radiodiffusion-Télévision Française, and I suppose Mr. Hepp did not want to be *plus royaliste que le roi*. He is to be congratulated for his tact, but I assure him that his personal standing entitles him to hold aloof from the linguistic counterfeits that are today becoming common currency. After all, he has entitled one of his introductory talks *Radiophonie*, and that shows that he does not stoop to the loose usages in which the modern world excels. I should have understood and admired him all the more if he had remained a purist to the bitter end.

B. M.

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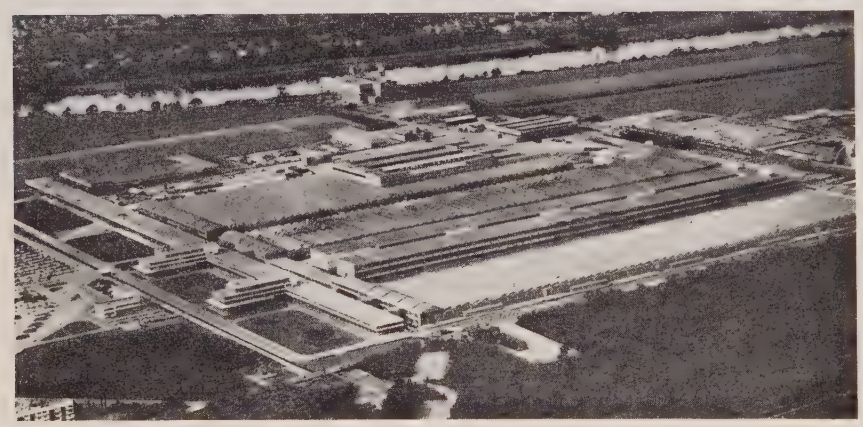

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United Kingdom — British Broadcasting Corporation

Vatican State — Vatican Broadcasting Service

Yugoslavia — Jugoslovenska Radiodifuzija

Associate Members

Australia — Australian Broadcasting Commission

Belgian Congo — Radio Congo Belge

Burma — Burma Broadcasting Corporation

Canada — Canadian Broadcasting Corporation

Ceylon — Radio Ceylon

Ghana — Ghana Broadcasting System

Haïti — Service des Télégraphes, Téléphones et Radiocommunications de la République d'Haïti

Japan — Nippon Hoso Kyokai

New Zealand — New Zealand Broadcasting Service

Pakistan — Radio Pakistan

Portugal — RTP - Radiotelevisão Portuguesa

Union of South Africa — South African Broadcasting Corporation

United Kingdom — Independent Television Authority and Independent Television Companies Association Ltd.

United States — American Broadcasting Company
Broadcasting Foundation of America
Columbia Broadcasting System, Inc.
National Association of Educational Broadcasters
National Broadcasting Company, Inc.
US Information Agency

Imprimerie du « Journal de Genève »

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By decision of the Administrative Council in Rome on 30th May last, the European Broadcasting Union is again publishing Part A (Technical) and Part B (General and Legal) of the E.B.U. Review *in alternate months. As a result, the* Review *will become a monthly periodical, which it is hoped will do much to increase circulation and stimulate interest. Part B will now be appearing every odd month, and this number which is being published one month earlier than usual is therefore dated July instead of August.*

The fifth anniversary of Eurovision has already been the subject of legal and statistical items in No. 55 B, and we are now completing this information with a series of articles devoted to programme aspects. In view of the importance of this anniversary for European television and the growing number of programme exchanges involved, we felt justified in devoting two successive numbers to a description of the scope of the enterprise.

We should at the same time like to draw our readers' attention to No. 55 A of the Review, *which is devoted to the fifth anniversary of Eurovision viewed from the technical angle, and we take this opportunity of paying tribute to the engineers and technicians from every country whose perseverance and foresight brought Eurovision into being.*

Editeur responsable : Ch. Gilliéron, 1, rue de Varembé, Geneva (Switzerland)

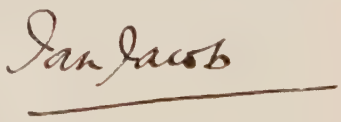
MESSAGE FROM THE PRESIDENT OF THE UNION

Eurovision, whose fifth anniversary we celebrated on June 6, is something more profound than an exchange of programmes—or even the remarkable engineering techniques that make it possible. We who work in Eurovision know that when we go to a planning conference, or collaborate on a programme, we are taking part in a continuing adventure. And we like to think that the programmes we exchange are links in that chain of understanding between our countries which is so vital to our future.

June 6, 1954, marked a major step forward in the exchange of television programmes among neighbouring countries, for it was during the month which followed that eight services, namely those of Belgium, Denmark, France, Italy, the Netherlands, Switzerland, Western Germany and the United Kingdom, linked their television networks in order to share programmes which were originated at various times in each of these countries. It was already a far cry from the early 1950's when it was an adventure to transmit a television programme over 200 or 300 kilometres. The problem of conversion of the pictures from one standard to another had not then been tackled; and no machinery existed for co-ordinating the exchange of programmes. How great a debt do we owe, therefore, to those who had the vision to realise the possibilities, and whose ingenuity enabled them to overcome the immense difficulties—programme, administrative, legal and technical—until today we have a smoothly running machine under the unifying hand of the E.B.U.

I feel, too, that this is the time to remember those earlier days, beginning with the first cross-Channel television in 1950. While much of that early spadework was done by RTF and the BBC, it is well to remember the credit that must also go to those other services, particularly in the smaller countries, who started actively to participate in Eurovision, with all its demands on their programme and technical staffs, at the very moment when they were bearing the stresses and strains of getting their own domestic services going. And we remember too with gratitude the debt that we broadcasters owe to the postal authorities in providing and operating vision links for us and in helping us to solve the many problems which have arisen in connection with sound, vision and communication circuits.

Eurovision is no longer a novelty in the television programmes of the countries of Western Europe. I look forward with pleasure to the day—not, I feel sure, far distant—when it will be regarded as a normal and indispensable element of all the television networks in Western Europe and even further afield.



GENERAL SECTION

EUROVISION — A SIMPLE IDEA THAT WORKED

by MARCEL BEZENÇON
Director-General of the SSR
Chairman of the EBU Programme Committee

The direct relay over the European network of the *Fête des Narcisses* at Montreux on 6th June 1954 saw the birth of Eurovision, and the World Football Championships in Switzerland, following fast on its heels, administered the necessary stimulant. It looked a healthy infant, in spite of the danger signals that promised serious trouble ahead—or so the pessimists would have it.

In short, the idea seemed a simple one and the world is full of ideas; but when it comes to making them work, that is a very different matter! The celebration of the 5th anniversary of Eurovision is in reality the celebration of a success that is due to the efforts of men of good will—the prime movers of radio and television in Western Europe. And how many of them are there who have not given up their own private interests for the common good in the course of the last five years?

Eurovision is in line with the ideal the European of today is in pursuit of, now that the boundaries of man's horizon are those of his planet—when he is not aiming at the moon or dreaming of Mars. To be sure, looked at on the map of the world Eurovision covers a very modest expanse of territory; the tip of a peninsula or, to put it better, the cradle of our civilisation. Seen from afar, its existence seems not only normal but so inevitable that it would be absurd if it did not exist. To reason thus in ignorance, however, comes of knowing little of a Europe that has long been the centre of the world and is struggling today to maintain its greatness by dint of parading a fierce concern for its peculiarities and for national privileges rendered often invalid by a surfeit of wars. The artificers of Eurovision have paid no heed to this, but in their desire to make their joint project a success have resolutely stepped over the stumbling blocks that stand in the way of many an effort of general interest. They had no mind to be like the sages of Byzantium, engaging in fierce argument as to the sex of the angels while the enemy beleaguered the city.

It might be said, then, that Eurovision was made for Europe, in spite of Europe. If it had had to pass through the Parliamentary sieve, it would not be celebrating its 5th anniversary today but would still be bogged down in theoretical discussions as to its relative merits and demerits, and we might even be on the point of beating a retreat in the face of the difficulties that had piled up in the long run. Who knows? We may have been lucky that some people in the early days did not believe in the

(Photopress Zürich)
Mr. MARCEL BEZENÇON

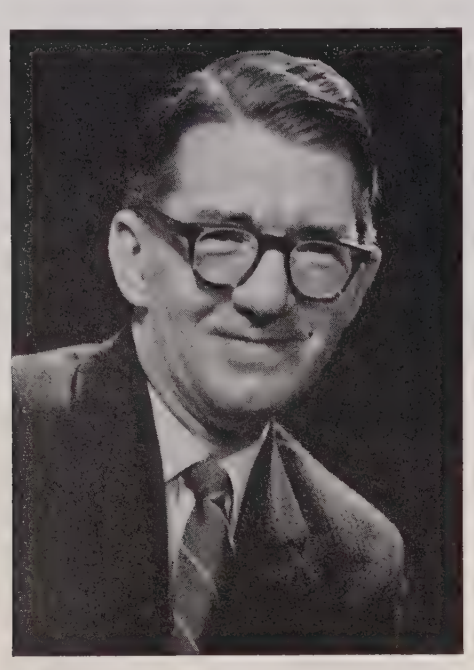
importance of this network, stretched out over half a continent, bearing images of life and of truth.

* * *

" Images of truth " is no exaggeration of the facts. I believe I am speaking for the many directors of radio and television organisations when I say that all are aware of the importance of the social, ethical and cultural problems raised by modern media of communication.

Are they superintending an advance towards better things or a retreat to worse? Man has grown suspicious. The succession of technical miracles that is sweeping him along and fashioning his fate may be a source of nourishment for his pride but at the same time it fills him with qualms. He sometimes feels that there is more calculation than there are morals in his genius, and he wonders

whether in the belief that he is freeing himself from one form of slavery he is only tying himself up to another whose chain is all the heavier for being golden. Each mystery he solves brings him up against an even greater



(Photo BBC)

Mr. Cecil McGivern, C.B.E.
Deputy Director of Television Broadcasting, British Broadcasting Corporation

one, and his anxiety grows when he looks back over the path his discoveries have led him to tread and finds he has sometimes lost his peace of mind and his concern for his soul on the way. It is as if with every step man takes some primordial fate were pushing back the horizon of the paradise lost he is trying to regain.

Radio, like the Press—we know only too well—has the makings of a terrible weapon of war. It is not necessarily the vehicle of truth when private interests demand a travesty of the truth. It has its own way of making history, for the facts it broadcasts from its loudspeakers are often shaped by private opinion. There is adequate reason for not underestimating the honest man's apprehension in the face of such phenomena.

By the simple nature of its direct relay of events, Eurovision is not concerned with stuffing the brain with false stories. Its aim is to capture " life " and it passes beyond the frontiers, presenting the facts with artless simplicity. It makes no claim to art which, whatever the form, is no more than a method of self expression.

From the moment it sets its cameras up, Eurovision is ready to bring us the facts, plain and unvarnished. Did someone not make the claim that Hitlerism would have misfired much sooner if television had been widespread in the years before the war? A documentary made by the BBC would seem to bear out this hypothesis. The sight of a führer gesticulating, hurling invective, grotesque, in front of a formation of automatons in uniform would have shown effectively the repulsive inhumanity of National Socialism. The pseudo-magnetic quality of the speaker vanishes, leaving only the ridiculous. And why? Because the small screen, unlike the cinema screen, caters for the individual, not the crowd. Nothing is more revealing than a face in close-up. It shows the sincerity of a man or his guile. Television is often accused of reinforcing the " mass complex " which the European of the West so rightly fears. Who can say whether Eurovision with certain of its direct relays is not administering a salutary corrective by showing the individual the true picture of what is going on?

It is perhaps too early to be sure, but it is something that we should ask ourselves in a few years' time.

I should not like to have it thought, however, that I am not aware that television can also be a deadly weapon of propaganda and controlled information. If it is in too close contact with the Government, it inevitably tends to become identified with the Government. The politician can make use of it to strut about to his heart's content, if he is in control. But I am talking about Eurovision here, and more especially the events that are relayed live after being offered to the various foreign countries which are at liberty to take the relay or not, as they please. They are careful in their choice not to

(Photo Kurt Bethke)

Mr. E. Beckmann
Intendant, Hessischer Rundfunk

swamp their countries with programmes full of the propaganda of other countries. They pay particular attention to the documentary aspects of the broadcast and they very often provide their own commentaries, giving their viewers in this way a picture that is very close to the truth, if not the whole truth.

This is a very important question because television seems to have a fabulous future in store and, as a French journalist has put it, the magnitude of the revolution this phenomenon is bringing about in customs and manners demands that it be watched more closely. Or in the words of a set owner: " The world is on your doorstep when you have the films in your own home. You feel you are in the picture. "

That is, of course, what Eurovision does. It " puts a man in the picture " by showing him the world as it really is. It helps him to take part and allows him to judge for himself, no longer leaving him to the mercy of the commentators, the gossips, and the " loud speakers " that embellish or distort at will.

* * *

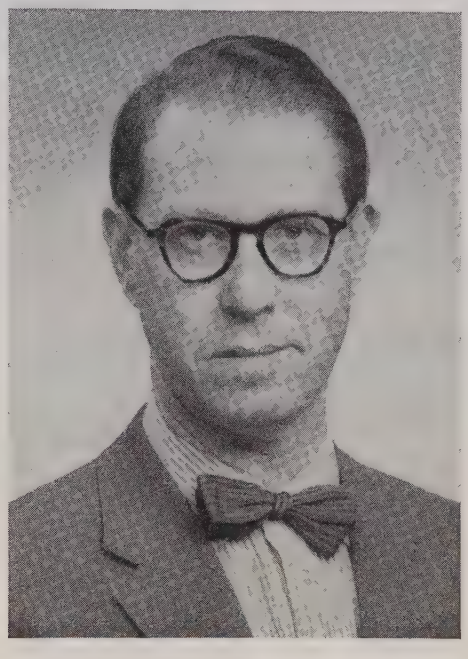
For the moment, Eurovision is still feeling its way. It is not always sure of itself and there are many " stop " signs along the road. It frightens some of the performers' unions; it continues on its way, discussing rights and fees, with its clients at every milestone. But this is not surprising, because the ground is new and there are no legal precedents. Besides, isn't television itself still looking for the forms of expression that suit it best? Television drama is a mythical reality, trying to trace a parallel between the film and the stage work. The sports commentators have not all discovered exactly how to rid themselves of the traces of sound broadcasting.

At present there are great hopes for the use of the European network for the daily exchange of newsfilm between organisations. This is an undertaking that fits the very nature of television and if it succeeds it will be one of the most obvious reasons for the existence of Eurovision. It will not just be " a window on the world ", as people have been saying for the past few years, but ten, twenty, windows thrown open to the whole panorama of human agitation.

But let us not delude ourselves; Eurovision has its limitations, especially in the linguistic sphere. Broadcast drama is affected by these limitations and stops short at the frontiers of the language used. And although music is a universal language, it has to be admitted that it is better suited to sound radio than to visual. In spite of the trimmings often used to deck it out, it rarely makes what might be called a first-rate programme on television. As for the cultural broadcast, generally speaking and in spite of efforts to extend its scope on the continent, it seems to be less adaptable than the spiritual, as Eurovision gets on very well with the Church.

And what about opera? Can it be successfully presented on the small screen? Eurovision is intending to try out a new venture in the form of a contest organised in Salzburg. Then there is the Prix Italia with its awards to documentaries, the Eurovision Song Contest, and other joint broadcasts.

Most are still mere seedlings and the future will tell whether a bumper crop can be expected after they have been weeded out. That is not to say that such productions are not in many cases highly sucessful even now, but it is abundantly clear that the viewer appreciates more than anything else the live relays of important events taking place in Europe. This is where Eurovision justifies its existence and consolidates its position. As



Mr. Henrik Hahr
Programme Director, Sveriges Radio

Sir Ian Jacob, the President of the Union, said, Eurovision's final aim is at one with the very *raison d'être* of television, that of ensuring the instantaneous transmission of topical events. It goes beyond mere entertainment and becomes a dispenser of pure direct information; it grows into a veritable necessity.

I shall not go so far as to say that for this reason nations will understand each other better, as used to be claimed whenever a new medium of communication was inaugurated. That old candle can be snuffed. But it is possible that a feeling for the human element may become more generalised, the frontiers of nationalism less wide, and the fresh air may circulate more freely. It is blowing up so nicely already that some of the countries nearer the East would not object to leaving the door open to the draught. America too shows signs of moving. For some time now it has been studying ways of establishing a television link with the European continent. On a take it or leave it basis, of course.

These are the problems that are now under discussion. They pose a number of additional questions, and there is every chance that next year, perhaps, we may see the union of Eurovision with a transatlantic partner.

It is obvious, then, that things are moving at a good pace and nothing, it seems, can prevent the enterprise from forging ahead, except its possible attraction for certain controlling interests.

EUROVISION

by JEAN D'ARCY

Television Programme Director of the R.T.F.
Vice-Chairman of the E.B.U. Programme Committee
Rapporteur of Working Party GTV/2 of the E.B.U.

Five years already! Eurovision—the word has made a name for itself and now has a very distinguished posterity, if we think of Euratom, and other such appellations. George Campey, the journalist, now with the BBC publicity department, can be proud of the

Mr. Jean d'Arcy

name he gave in 1954, on behalf of public opinion, to a creation which its creators were at a loss to know how to label. The BBC spoke about " Continental Exchanges" (with all the distrust and fascination, the uneasiness and superiority which this epithet has come to imply ever since England discovered the Continent); the RTF looked at it from the administrative angle and spoke of " European Exchanges of Television Programmes "; in Geneva they talked in proper banking style about a " *Bourse de programmes* "; and meanwhile the specialists in international institutions who had already invented UN, NATO, UNESCO and FAO were burnishing their sigla. It is highly encouraging when public opinion takes it upon itself to bestow a name on an international organisation. It points to a need, simple and comprehensible, that has been satisfied, and is the sign of an organisation that is all set to become an institution almost before it has been thought of.

The official inauguration took place before several millions of Europeans on 6th June 1954, but Minervas such as this don't spring fully armed from the brain outside Greece (not yet one of our members but due, we hope, to join us shortly), and we were no Jupiter.

EUROVISION IN THE STONE AGE

This is the history, or one might say the pre-history, of events. In 1950 Norman Collins and Cecil McGivern, who have been longer on the job than any of us, thought it was time they emerged from Alexandra Palace, despite the wonders they were working there. They felt that a new landing on the Continent would be calculated to give their country fresh confidence. Calais and its burghers, for whom England has always had a certain fondness, were singled out and with the help of the engineers the first link with the Continent was established in August 1950. That, say some at the BBC, is how Eurovision began. Nothing of the sort! the RTF retort. Eurovision is much more than a technical achievement and that particular programme was simply the first of the unilateral programmes, a type that the BBC has since then somewhat developed, as the statistics show. The proof is, that Imlay Watts was already there!

In 1951, encouraged by this success, the BBC and the RTF decided to pool their resources and organise a joint venture. During the whole winter of 1951-52 preparations went ahead actively for a joint RTF/BBC Franco-British week which was held from 8th to 14th July 1952. That, say the RTF, is when the seed of Eurovision was sown. All the components were there: the pooling of resources, co-production of joint programmes, standards converters, simultaneous commentaries, and high cultural and human motives. The reader can judge for himself by casting an eye over the historic official communiqué issued at the time, now imbued with the fragrance of age:

" During the Franco-British television week, 17 transmissions consisting for the most part of outside broadcasts will be produced jointly in Paris by the French and British television services between 8th and 14th July for viewers in both countries.

" This will be the first time in the history of television that the same programme has been addressed to audiences of different languages and nationalities. The purpose of the week is of course to give British viewers some insight into the everyday life of Paris, both at work and at play, but at the same time this attempt at international

cooperation will be equally interesting to French viewers, called upon in this way to participate in the first experiment in establishing direct human contact beyond the frontiers by means of this new medium of communication —television..." (Here follows a summary of the programmes).

" All these programmes will be televised with the help of RTF mobile reporting equipment and additional facilities supplied by an English firm. British producers and BBC commentators will assist their French colleagues

Mr. Eduard Haas
Television Director, Société Suisse de Radiodiffusion

in this series of broadcasts which have been prepared jointly by both services. "

Everything was there, as I said, even to the usual breakdowns in such cases—despite the fine performance of Martin Pulling, T. H. Bridgewater and S. Mallein—and the criticism in the Press, which has had ample opportunity since then to practise on Eurovision. But all this was nothing, the other television services contended: Europe *à deux* is not really Europe.

The BBC and the RTF were encouraged by their success, however, and at the end of the Franco-British week, on 17th July 1952, they announced at a joint Press conference in Paris that the Coronation of H. M. Queen Elizabeth would be relayed in France in June 1953. In September 1952, the television services of the Netherlands and Germany asked the BBC if they might also participate in the relay of this ceremony, and the INR which had not yet started its television service announced that it would put its technicians and equipment at the disposal of the group so that the signals could be routed across its territory. The whole of the winter of 1952-53 was devoted by the engineers of all five countries to joint preparations for this important event, whose success on 2nd June 1953 is now common knowledge.

Surely this was all that was needed. Not quite, said the EBU: it had not yet become a regular institution. In July 1953, the RTF made a proposal to the other four participants for a joint week of programmes to be given at Christmas. The idea was taken up, a technical meeting was held in London in July and a programme meeting in September. At the last of these meetings, it was realised that if we were to wait for a little instead of preparing something jointly for Christmas, there would soon be eight television services instead of five, when we were joined by Switzerland, Italy and possibly Denmark, and, secondly, the World Football Championships in Switzerland in June 1954 would present an excellent opportunity for inaugurating something of real importance. At a series of meetings in Paris in January 1954, engineers and programme directors from the eight television services fixed the dates for a month of joint exchanges and at the same time started to make plans for another session of exchanges at a later date and the formation of what the Press at that time were calling a European television network.

In November 1953, however, the EBU, which numbered among its members all the organisations already mentioned, and which was still free of the anxieties that television was later to cause it, met in Monte Carlo. Three years before, our brilliant and accomplished Chairman, Marcel Bezençon, taking up an idea he had already submitted to UNESCO and the UIR, had proposed to the Administrative Council the creation of a system of television programme exchanges. This proposal which was both fine and realistic was not considered feasible by certain persons and they fought it vigorously, for at that time the E.B.U. functioned under the system of complete independence of the organisations and did not concern itself at all with programmes, and very little with television. The result, however, was the setting up of a television study group under the chairmanship of Marcel Bezençon who continued to fight within the EBU for the establishment of a system of coordinated programme exchanges at the European level. The success of the relay of the Coronation ceremony and the numerous meetings of programme directors who were getting together outside the EBU to plan various projects gave added weight to Marcel Bezençon's proposal. The EBU decided therefore at Monte Carlo to set up a Programme Committee and to invite its young television directors not to meet among themselves outside this Committee whose competence extended both to television and to sound broadcasting.

The first meeting of the Programme Committee was held in Geneva in February 1954, and Working Parties GTV/1 and GTV/2 were formed at the meeting[1]. There-

[1] Mr. M. Bezençon was appointed Chairman of the Programme Committee, and Mr. J. d'Arcy and Mr. R. McCall Vice-Chairmen. Mr. S. Pugliese was asked to take over the chairmanship of GTV/1 (exchanges on film) and Mr. d'Arcy that of GTV/2 (direct exchanges). (Ed.)

after, at the instance of the Committee the work that had hitherto been done in a semi-official capacity by the television programme directors, such as the project aiming at a month's joint European programmes, was transferred to these bodies. The plan for this month of joint programmes was finally drawn up in Cannes in March 1954, this month of June 1954 whose anniversary we are now celebrating and to which public opinion gave the name of EUROVISION. This time the institution was well and truly born, baptised and adopted by the European Broadcasting Union.

EUROVISION IN MODERN TIMES

Viewers in Europe saw 19 programmes produced by 8 countries between 6th June and 4th July. The first programme given at Whitsun was the relay of the *Fête des Narcisses* in Montreux, followed an hour and a half later by a visit to the Vatican where Pope Pius XII addressed viewers of the eight member countries of Eurovision in turn in their own languages.

In the eyes of the public, it was an unqualified success. The Daily Express splashed over 6 columns the heading " And now for world television ", and both the British and Continental Press hailed it as the triumph of Eurovision.

There followed 17 programmes of which 10 were relays from Switzerland of matches for the World Cup that won popular success for Eurovision. At the same time the public's feeling that there was something miraculous about it all gradually wore off and Eurovision became a commonplace.

At the meeting of the Programme Committee held next at Sestri Levante in July, the conclusions drawn from this month of exchanges were optimistic. The Planning Sub-Group, Eurovision's executive body, was set up under the chairmanship of Eduard Haas, with Imlay Watts and Heinz von Plato, and plans for the future were drafted. It was decided to inaugurate regular exchanges from then on, without going in for systematic production of exceptional programmes.

The centralisation of offers and requests became the responsibility of the Administrative Office, and thanks to Léo Wallenborn, joined a year later by Henk Maas, the prodigious task was performed which made it possible for Eurovision to lead the active life that has become familiar to us.

Since the historic date of 6th June 1954, other television organisations have joined us: Austria at the end of 1955, Luxembourg and Monte Carlo in 1956, the ITA in 1957, and Sweden in 1958. The number of television organisations now taking part in direct exchanges on Eurovision is 13 and among them they have exchanged 806 programmes, representing 981 hours of broadcasting as at 31/12/58.

Of these programmes, statistics show that about 62% were sports transmissions and 12% actualities, which are obviously the easiest to broadcast as they simply require commentaries in the various languages. Variety, music, drama and cultural programmes took up 26% of programme time.

The Eurovision network has also been used intensively, however, for exchanges between two countries or for joint productions between countries belonging to the same linguistic community, and in the case of these bilateral programmes and joint productions the proportion of culture to information is reversed.

PROBLEMS THAT HAD TO BE SOLVED

In another article of the *E.B.U. Review*[1], Martin Pulling deals with the technical difficulties which have been surmounted by the engineers of the different organisations and those of the PTT at the instigation of the EBU Technical Committee and its Chairman, Mr. E. L. E. Pawley.

These difficulties were tremendous and the fact that they have been solved is certainly Eurovision's major triumph. My knowledge of some of these difficulties may, I think, allow me to express my thanks here to all those who made this network possible, and first and foremost to Martin Pulling of the BBC, Rapporteur of Working Party L, Stéphane Mallein of the RTF, Rapporteur until recently of Working Marty M, and the EBU Technical Centre, with Henri Anglès d'Auriac and then Georges Hansen assisted by Jack Treeby Dickinson and E. Griffiths, all of whom have made it possible for programme directors to work out their most complicated projects.

In 1954, I believe there were three main technical problems taking up their attention: standards conversion, the international junctions to be established between the various networks, and central technical coordination. These were supplemented by a fourth problem which was also to be supremely important, as is usual in television, and that was the problem of sound.

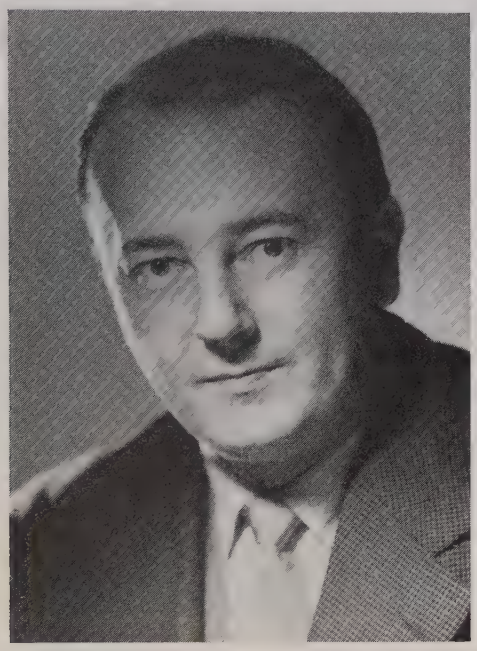
Standards conversion, a major problem in view of the three main systems in use in Europe (405, 625 and 819 lines) was solved in 1952 when the BBC and the RTF worked out simultaneously and separately for the Franco-British week a converter that enabled the RTF from then on to stop using both the 441—and the 819—line systems at the same time. A converter was functioning in Cassel in 1952. Two were set up, one in Paris and the other at Breda, for the Coronation, and by June 1954 four had been set up. Since then, the technique of conversion has made considerable advance and converted pictures no longer have that rather glaucous look of the early days.

In 1954, there were national television networks making it possible to route signals to the various transmitters but they stopped short at the frontiers. All these networks had to be joined together.

One of the most important links was that between England and the Continent. It was constructed in 1954 by the RTF and the BBC from Lille to Dover and London, provisionally at first and later as a permanent

[1] *E.B.U. Review* No. 55 *a*.

link. Links were likewise established between France and Belgium, Belgium and Hólland, Holland and Germany, Germany and Switzerland, Switzerland and Italy, and Denmark and Germany. At the time it was not in fact a network complete with "meshes", but a chain, and one of the first results of this chain system was to



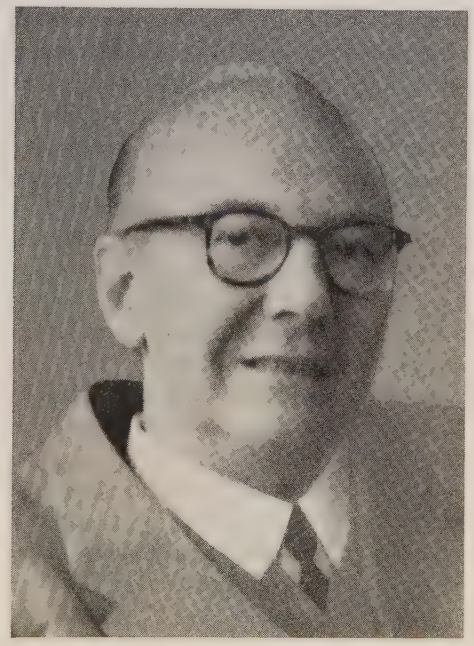
(Photo Otto Tomann)

Mr. Gerhard Freund
Television Director, Österreichischer Rundfunk

bind us closer together. If one of us was to be able to take a programme his neighbour " up-stream " had to accept it on his territory. A programme from Italy, to be seen in Paris, had to be transmitted in Switzerland and Germany to Swiss and German audiences. Today the network does exist and the "meshes" have been formed all over. France and Belgium are linked direct with Germany without having to pass through Holland; Switzerland and Italy direct with France, etc., and at the same time two-channel and even four-channel links have been developed making it possible to route two programmes simultaneously. The only problems now are those met by the countries at the " fringes " of the network, such as the Scandinavian countries and Austria which are still dependent on Germany, but these difficulties will be rapidly overcome with the construction of new relay stations.

The need became apparent for a centre to control and coordinate the activities of the network and this was created and installed in 1954 at the top of the Belfry in Lille. Many of us can still remember these early days when we officiated in the midst of innumerable lifts and stairs, Stéphane Mallein on the one side and Imlay Watts on the other, surrounded by telephones labelled London-Paris-Brussels-Cologne-Milan, etc., standing by for breakdowns, correcting signals, keeping an eye on time tables and connections. Since then, this centre has been transferred to Brussels, the stairs and the lifts are still there, and the telephones, but the installations are now situated in the Dome of the Palais de Justice, much improved and more permanent. The EBU Technical Centre and the INR are in charge and Jack Treeby Dickinson, E. Griffiths and their colleagues see to the functioning of the centre, climbing up and down the stairs of the Dome at night so that Europe may be able to see itself. The day will certainly come when there will be no more stairs to climb and the lifts will go right up to the top in the Palace which Eurovision will build to house its " brain ".

On the programme side, the difficulties were less spectacular but no less great. To take languages first: the eight television services participating at the start represented among them 6 basic languages. In Western Europe, all of which is still not in the network, at least 14 different languages are spoken. Simultaneous commentaries were obviously the only solution and for all programmes each country or linguistic group sent a commentator who was free to comment in his own fashion on the picture which all of his colleagues were



Mr. Jens Fr. Lawaetz
Television Director, Danmarks Radio

using. This meant that our engineers and those of the PTT were faced with problems almost more difficult than for sound radio and we had to make some harsh rules: no visual interviews, and no programmes in which the dialogue forms part of the action. That explains why there is such a high proportion of sports programmes and actualities in our statistics. The " guide-line " principle was tried with the commentators staying in their own countries and commenting in the

studio " off-tube " on the basis of a standard commentary in English or French supplied from the point of origin of the programme. But this type of commentary is very difficult and impersonal and has not been used very often.

Then there was the nature of the programme. It is considered good form when making official speeches to speak of the picture in terms of an international language. Actually nothing could be further from the truth. The Anglo-Saxon, Latin, Scandinavian and Germanic races do not use pictures in the same way to communicate ideas. The subject is not divided up according to the same rhythmic patterns, nor is living matter tackled in the same way. Their tastes are not identical and they simply don't see the same thing when looking at the same picture. It is possible perhaps to think of the picture as an international language some time in the future, but certainly not at present. A brilliant theme for a broadcast that seems lively and attractive to the Latin is quite unbearable to the English person; a programme that is thought highly of in one place is forbidden in another. Eurovision became a school for us where we learned tolerance and understanding of others. The difference in the stages of development of the television organisations was another very real obstacle. A programme that had become a commonplace in one country was still considered to be something out of the ordinary in another. Professionals though we were, using the same words, we were not speaking the same language and those who had been longest on the job soon gave up trying to describe their experiences to new-comers. Youth had to have its fling and the same mistakes had to be made so that we might all have common knowledge.

The legal problems were also tremendous and if it had not been for the help of the Legal Committee under the chairmanship of the late Maître de Vries and now Mr. Maurice Lenoble, and the advice of the EBU Legal Adviser, Mr. G. Straschnov, we might have got ahead much more quickly but we should have been halted just as quickly ! National legislation and jurisprudence on the subject of television differ greatly; the position and the reactions of the unions, syndicates, associations, federations and confederations which group all who are associated with creative work, interpretation, show business, sport and news in the different countries of Europe are astonishingly varied in terms of Roman or Germanic law, history, customs, politics or simply national temperament. A show which can be transmitted in one place is forbidden in another and the search for the least common denominator, the famous compromise on which so many reproaches are heaped, is often for the time being the only way to discover a basis for future legislation.

Financial problems were a source of preoccupation to us from the start, they still are and always will be. Television is a costly business at any time, but Eurovision is even more expensive and the outlay for a programme that is to be offered to European audiences is considerable. From the beginning, the idea of sharing expenses and dividing up certain costs was accepted, but at the same time the notion of " big " and " small " television organisations emerged, the distinction between " rich " and " poor ", services that had made sufficient progress to be able to pay and others only starting out that could not—a subjective notion indeed and one that has to be reviewed periodically in the light of the essential driving force of Eurovision: community of interests.

A BACKWARD GLANCE AND A LOOK INTO THE FUTURE

This then was how Eurovision took shape. If we try now after this brief and rapid summary of events to define the motives that prompted us, they can probably be reduced to two.

First there was the desire to get the maximum yield out of television. For many people television is only an improved method of delivering sound and pictures in the home. For us it meant much more; it was a remarkable instrument of knowledge and exploration and there was no point in having conquered time and space only to hang around the suburbs of our capital cities. We all felt it was our bounden duty to go as far afield as possible in the search for good pictures which would enable our viewers to discover the world that lay at their doorstep.

Furthermore, we were all in the same position, without studios or sufficient equipment to produce the programmes we needed. The idea of pooling our resources and thus making it possible for each of us to be able to use, in addition to the equipment available on his own territory, other facilities in London or in Rome seemed only right and proper. It was no longer simply the idea of exchanges that prompted us, but the need to share and to produce programmes in cooperation with each other. With the European television network in its present form, Eurovision is not simply a matter of programme exchanges—a formula that is now out of date—but in fact a system of joint production.

We had indeed discovered one of the essential laws of television: like many other modern inventions, it is no longer on the scale of our European countries. Television is now continent-wide; both from the creative angle and from the point of view of profitability, it demands a whole section of the universe and requires the assistance of millions of human beings in order to exist.

This Continent of ours is not however an undivided whole. Composed of many different nationalities, it lacks unity, but it is probably not desirable that things should be otherwise. The richness of our resources stems from our diversity, our vitality is born of our differences, and these differences must be preserved for they are part of our assets. As long as there are frontiers, television will to some extent be an attribute of national sovereignty; there was no thought of giving up our liberties. And so the organisation we were to establish

had to take account of the absolute necessity for each of us to preserve the complete independence of the organisation he represented. We could not, on the pretext of efficiency, create a joint central direction of the television services of Europe. In Eurovision, we have substituted coordination for direction, leaving each complete freedom to offer, accept or refuse a programme. Our policy is one of constant compromise between efficiency and freedom of action, and the Administrative Office which is in charge of coordination on behalf of us all has done full justice to this role both in the time of Léo Wallenborn who was responsible for creating it

Mr. Louis-Philippe Kammans
Television Director,
Institut National Belge de Radiodiffusion

and now Charles Gilliéron upon whom the heavy task has fallen. Let us not yield to the temptation that lurks in efficiency lest we destroy what we have created.

Only mutual confidence makes feasible this policy of individual freedom in creation, and it is probable that the results we have obtained are due to the friendly relationship between those responsible for the programmes. That is an essential point. Eurovision has been possible only because it was the programme directors themselves who got together and not their representatives. If we had not made the effort—and a very creditable one it was for some of us—to come in person to these conferences which are sometimes disappointing; if we had not been keen in each separate country on dealing direct in matters concerning Eurovision, the idea would certainly have been a failure. Over the years, we have learned to know each other, to respect one another and to foresee our reactions in the face of difficulties. It was essential that those ultimately responsible in each country should be to the fore, those who had the power to take decisions as regards a given programme without having to refer back to another authority.

This state of affairs must be maintained at all costs but it sets a problem today. Instead of the eight directors at the beginning, there were more than 40 of us at the conference table when we last met in Stockholm. Far from deploring this increase in number and regretting the good old days, we should be glad of such a muster which is proof of our vitality and usefulness and a pointer to the remarkable future we have before us. At the same time however we should give pause, reflect on what was responsible for our success and examine what is worth keeping and what should be abandoned or modified.

The EBU being one of the few international broadcasting organisations in the world, it is inevitable, because of our experience, the solutions we work out and the legal procedure we formulate, apart from the programmes we produce, that the other television organisations of the world should come and join us as associate members —and that is a good thing. What we must not accept is that the meetings of our working parties develop into Assemblies. That is a matter of agenda and personal discipline, but it is also a question of a better division of the work. The early days of the Belfry of Lille and the directors competent to deal with every kind of question are now behind us. It is no longer possible for us to deal in person with all matters; our role is more and more to choose and decide on the basis of reports from our specialised collaborators. It is our job to bring our heads of services across Europe into contact, and the experience of the specialised meetings held in the course of the last two years is reassuring. The meetings of stage-designers, sports experts, and persons responsible for agricultural broadcasts, for example, all held under the chairmanship of one or other of us, have shown that this was the only way to avoid losing ourselves in long and fruitless discussion in the working groups. It only remains for us then to remember that the Bureau of the Programme Committee with its limited membership is the proper place for discussions of principle.

There are now 13 European television organisations which are active members of Eurovision, that is to say, connected to each other by a network of radio links and capable of offering and receiving common programmes. This network will rapidly be completed. In the next few years, organisations still outside the fold will join us: Norway, Finland, Ireland when it starts its television service, Spain and Portugal which will be connected through France, and finally Yugoslavia, Greece and Turkey. The network will be completed and perfected by improving its links and making it possible for each country to take a programme from any point on the Continent without having to depend on its neighbour. And this will be the prelude to an era when the Eurovision network will be connected up with other continental networks already in existence or yet to be formed. The spectacular provisional link between Europe and Africa

brought into being in July 1958 by the RTF thanks to Stratovision will be set up permanently in the next few years by means of long-range relay stations on the ground. The link with the comparatively undeveloped

(Photo Kayaert)

Mr. Bert Leysen
Television Director,
Belgisch Nationaal Instituut voor Radio-Omroep

OIR network which has been used spasmodically on the occasion of certain sporting events will be strengthened by the force of circumstances and will set both sides a number of problems, while the link with America which has been under consideration for some years now on both sides of the Atlantic will become a reality in the next two years, provisionally at first like the France/Africa link and then as a permanent fixture. And so as the years pass, the web is woven more closely round the world, allowing pictures to be brought from every corner of the globe. But one day even the technique of the radio link will give way to the technique of broadcasts from satellites and then the television waves will admit of no frontiers. From that moment, Eurovision will completely change its aspect and the EBU will certainly be the only organisation sufficiently homogeneous and sufficiently diversified to withstand the shock of these new techniques that will lead to a system of " television in large groups " where all the frequencies will need to be reallocated and all the national services still be allowed to keep their own individuality.

In this way, tracing our network of relay stations across the surface of the globe, we are fashioning, day by day, year by year, a nervous system for our Continent that is much more powerful than any that have preceded it, whether it be roads, railways, telegraphs, telephone or radio, for it is actually the nervous system of that great body, public opinion, that network of sensory and motor nerves which enables communities to get to know themselves better every day. Able as it is to collect impressions from every point on the surface of the earth we live on and send out again concepts for reflection, stimulation and determination, the Eurovision network, by respecting and encouraging individual freedom and national liberty and personality, is offering at this stage in the evolution of mankind an opportunity for greater awareness, a deeper knowledge of the society in which we live and the earth we inhabit, and an understanding of the destiny of that earth.

1st May

THE FIRST FIVE YEARS OF WORKING PARTY GTV/1

by SERGIO PUGLIESE

Director of Television Programmes of the RAI
Rapporteur of Working Party GTV/I of the EBU

It was obvious from the first meeting of the Programme Committee in Geneva in 1954 that if we were to have a more efficient and rational approach to our work and a better coordination of our efforts so that something new and important might emerge in the field of international television relations—still at that time in the pioneering stages as far as the majority of European organisations were concerned—it was necessary to split up into two working groups, the first to concern itself with programmes produced by cinematographic means and the second with live programmes.

Indeed, the subject matter, the techniques and the methods of expression of the two working sectors were sharply divided and sometimes their needs were entirely divergent, requiring to be met and dealt with as each found best.

The objects of the first sector were to facilitate the exchange of filmed programmes between the various organisations; to produce joint series of programmes on film which would make it possible to cut down on the high production costs; to standardise the cinematographic material in use among the different organisations in order to improve its circulation.

The second sector, on the other hand, was to bring

forth that very important collection of works now forming the European network for the exchange of live programmes, the central point upon which one of the most important of Eurovision's activities hinges.

GTV/1 immediately set about methodically preparing its scheme of work. Among the first projects to be studied was the institution of a European *Magazine*. It was decided that each organisation participating would send to one given organisation, to be chosen each month, films of the main events in the social, political and artistic life of its own country. In its turn, the

Mr. Sergio Pugliese

receiving organisation was to make a selection of this material, provide the montage, draft the text of the commentary (in French or in English) and send a copy of the *Magazine* thus prepared to all the other organisations. This *Magazine* appeared once a month and a number of editions was produced.

In the meantime, however, the various organisations were rapidly developing their own news services through the medium of their daily newsreels. Also at this time, the first international specialised agencies were appearing on the scene, so that in a short time the *Magazine* created by GTV/1 had been outstripped by events. It was decided therefore to stop production, but the lessons learned from this first experiment enabled us rapidly and easily to work out other similar projects in areas that were more clearly defined and more limited.

And so the International Children's Newsreel saw the light of day and it has continued to be produced at a minimum cost for the benefit of some 15 countries, certain organisations participating every week and others every fortnight. This *Newsreel* dealing only with subjects concerning children and of interest to them has met with great success among the young people for whom it is intended, in every country.

It is perhaps worth recalling that this initiative which is due to GTV/1 has aroused such interest in television circles at large that it has encouraged a number of extra-European countries, such as Australia, Canada, the United States and Japan, to participate in these filmed exchanges. As a result, the International Children's Newsreel can count on presenting events in most parts of the world and thus, as time goes by, its scope is constantly being widened and enriched.

Following the same principles and using the same methods, it was possible in 1958 to start organising an exchange of films to be used for another International Newsreel on the subject of Agriculture, the life and work of farmers and their problems in the various countries of Europe and throughout the world.

Not all television organisations have regular weekly programmes on agriculture as yet, and so this project has not developed to the same extent as the Children's Newsreel, but the good results obtained by the organisations participating in these exchanges show that GTV/1's latest venture will shortly make it possible to include in the programmes of the different national networks a broadcast that is alive, well documented and produced at a moderate cost, because it is the result of a joint effort.

Production of film series

Over the last few years, GTV/1 has made great efforts to organise the production of series of filmed programmes to which each organisation contributes in the form of a film of its own making which it offers in exchange for the whole series consisting of as many films as there are participants in the project.

Thanks to these arrangements, the following series were produced in the course of the last few years:

Great Rivers of Europe — a series intended to illustrate the different civilisations, the various conquests and activities that have had their origins along the banks of the great rivers of Europe, from the Danube to the Rhone, and from the Thames to the Tiber. Nine countries participated in this project.

Great European Cities — a series produced along the same lines as the previous one, with 7 countries participating.

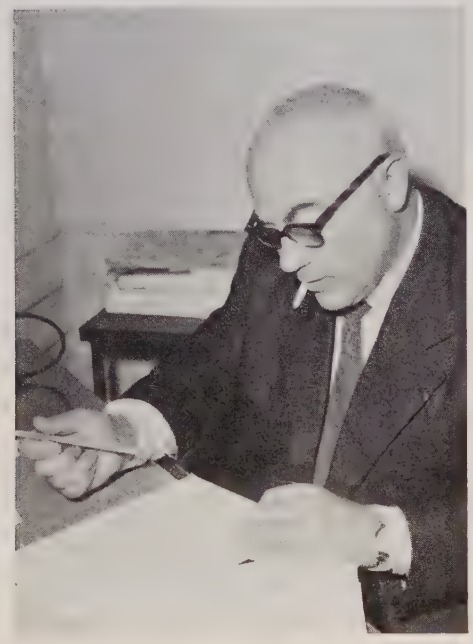
Small Towns — after " Great Cities " this was an attempt, by way of contrast, to shed light on the life, customs, and traditions of certain typical small provincial towns where more than elsewhere the particular characteristics of the different populations of Europe survive. Eleven countries took part in this series.

As I write these rapid notes, the various organisations have already finished, or are about to finish, production of a new series to be entitled:

High Places of the Mind — which is intended to highlight all the privileged places in Europe or elsewhere (the United States is also participating in this series) that

have marked a stage in the development of the human mind and human thought.

I might also add that another series dealing with scientific subjects is being prepared with the intention of revealing the research, the study and the experimentation which the public at large knows nothing of as yet because they have been carried on in the confined world of the scientist and the specialist, but which are nonetheless destined in the future to clarify and solve many problems for the better understanding of the world around



Mr. Jean Luc
Programme Director — Radio and Television, Radio-Télé-Luxembourg

us and to help to facilitate further and even greater discoveries.

The last two series were studied in close collaboration with the International University of the Air which established contact with GTV/1 in all questions concerning the search for and the presentation of cultural programmes intended to be used within the framework of Eurovision.

Looked at from the critical point of view, these film series produced on the initiative of GTV/1 have inevitably met with varying success, because they have not always reached perfection. But it should be realised that the results were always carefully scrutinised by GTV/1 and discussed separately, film after film, programme after programme, so that something might be learned from the mistakes that had been made or the deficiencies observed.

For this reason, it has been possible from one series to another to perfect both the methods of the Working Party itself when taking decisions and the means used for arriving at a better coordination of each separate production within the framework of the general harmonious whole of the series and its aims.

Smaller sub-committees were therefore set up for each type of programme, and they had the task of studying the scenarios, correcting any possible deviations, and even advising radical changes to avoid incoherence and overlapping.

Furthermore, on the occasion of certain sporting events of an international character and in order to assist the work of GTV/2 which provided the direct links, GTV/1, together with the national organisation most nearly concerned, worked out the arrangements for the shooting and the daily despatch of a vast amount of filmed material to all the countries participating.

In this way, highly successful documentation reached all the interested organisations on the occasion of the World Football Championships in Switzerland in 1954, the Olympic Winter Games at Cortina d'Ampezzo in 1956, the Olympic Games (Equestrian Events) in Stockholm in 1956 and the World Football Championships in Sweden in 1958.

There will certainly be no lack of work for GTV/1 in the course of the next few years. The results so far obtained and even the mistakes made over the past five years represent valuable experience, unique of its kind, because our working party is the only one in the world to attempt in a spirit of continuity to solve the difficult problems of televised cinematographic production on an international scale with the cooperation of 14 countries united in perfect equality.

Our efforts hereafter must continue to be directed increasingly not only towards the practical problems of production and film exchanges but also towards a more concentrated study of a certain style and the search for new forms of cinematographic expression specially adapted for television.

Only by so doing will we be able to use to the full this valuable and successful working tool which the European Broadcasting Union has enabled us to fashion.

Fourteen people putting their heads together over one table, and not just fourteen programme directors preoccupied by too many administrative and economic questions—that is what we ought to be. And that is what we intend to be.

OPERATION "EUROJOURNAL"

by J. W. RENGELINK

Programme Commissioner of the NTS
Rapporteur of the EBU Sub-Group for the Exchange of News Film

One of the most important tasks of all the media of mass communication, and hence of television, is to provide information on current events, thereby satisfying a need among the public to gratify its desire for knowledge, its curiosity and its instinctive thirst for news.

In addition, countries and nations today are bound to one another by so many links and have become so dependent on each other that events in one single country can have repercussions in many others.

Radio, and now television, are capable of keeping the public fully informed, although television has the special problem of not being able to content itself with mere spoken news bulletins. Pictures have to be added, sometimes in the form of photographs of well-known personalities and places, for example, but generally in the form of films. News can be transmitted rapidly from one country to another by means of radio communications or telex, and photographs can be dug up from the files or transmitted at very short notice on the Belin system. But film, which is the main stand-by of news on television, has to be developed, copied and mounted, and in addition it has to depend on normal means of transport (e.g. trains or aeroplanes). It is this question of transport that concerns many people most, for in spite of modern communications transport takes time, especially when the distances involved are long, and considerable delay can be caused owing to unfavourable weather conditions, such as fog. As a result, when the film appears as part of the television news it has lost much of its immediacy.

It seems logical, therefore, that the idea of using the Eurovision network for transmitting news in the form of pictures should spring up naturally in EBU circles. This means that films injected into the Eurovision network in Rome, say, can be shown in London or in Stockholm, for example, at the very same moment, or a few hours later in the form of telerecordings at a time which is more suitable to the receiving organisation. The use of the Eurovision network would mean an enormous saving in time, it would heighten the immediacy of the news and would be in the best interests of viewers.

In September 1957, in the refreshing coolness of the Palazzo Corvaja amidst the heat of Taormina in Sicily, the EBU Programme Committee decided, as the result of a proposal from the Nederlandse Televisie Stichting, to organise a meeting of chief editors of television news services in the member countries, at which it was proposed to study at the same time the possibilities of making regular use of the Eurovision network for the rapid exchange of news.

The meeting of chief editors was held on 10th and 11th March 1958 in Amsterdam and was attended by representatives of 14 organisations. Among the recommendations drafted at the end of the meeting with a view to improving exchanges of news were the following:

(Photo Herder)

Mr. J. W. RENGELINK

(a) the setting up of a study group to examine the technical, administrative and financial aspects of regular daily exchanges of news by means of the Eurovision network;

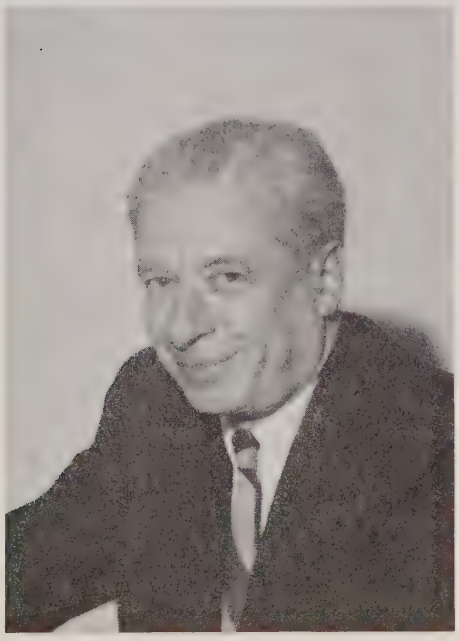
(b) the institution of an experimental service for a given period with a view to acquiring experience.

Working Party GTV/1 of the Programme Committee and Working Party L of the Technical Committee appointed as representatives at a meeting in March 1958 Mr. J. d'Arcy, Dr. E. Beckmann, Mr. J. W. Rengelink, Mr. P. Denis, Mr. G. Orsini and Mr. K. Scherber, with the possibility of inviting experts to assist them.

With Mr. Dickinson of the Technical Centre in charge of the secretariat, the study group decided to set up an experimental service in October 1958 for a period of a fortnight and the BBC, NIR/INR, NTS, RAI and RTF agreed to take part in the experiment.

The news agencies also evinced great interest in the experiment, and the British Commonwealth International Newsfilm Agency (Visnews), the United Press and Video France expressed the wish to take part, a wish that was granted subject to certain conditions. The most important of these stipulated that the material should be made available to all the organisations participating, including those which were not members of the agency in question.

The experiment in October 1958 acquired special significance in view of the fact that the death of the Pope occurred during that month. That is why the ARD,



(Photo Fausto Picedi)

Mr. René Lescieux
Director-General, Télé Monte Carlo

DSR, SRT and ITN also joined in the experiment for part of the time, the ITN deciding in fact to participate during the whole of the second week.

In addition, as a result of these exchanges of newsfilm it was also possible, through the intermediary of the BBC and the ITN, to supply the associate members of the EBU on the other side of the Atlantic with important news of events in Rome.

At a meeting of the study group and a number of experts in Rome in December 1958, it was concluded that the experiment had been satisfactory. It had not always been possible, however, to estimate how much it had cost and it became obvious that there was a real need to discover what results might be obtained if more countries were taking part. It was therefore decided to arrange for a further service trial in May 1959 which would last for a longer period, and efforts would be made to encourage more countries to take part.

The second experiment was conducted from 4th to 30th May 1959 inclusive. Throughout the whole period the BBC, NIR/INR, ITN, NTS, RAI and RTF took an active part in it. The ARD participated during one week, thereby making it possible for Denmark and Sweden to join in during the same week. Switzerland, which was prevented from taking part for financial reasons, declared its readiness to despatch news of the Geneva conference to all the countries via the network. Two agencies—the BCINA (Visnews) and the UP—were allowed to participate, but the problem of cooperation with the news agencies will have to be studied carefully as and when further developments arise.

This second experiment showed clearly again that on the technical and administrative sides, provided that certain conditions with regard to staff and equipment are fulfilled, a regular exchange of news should not now meet with any serious problems. The EBU Technical Committee, the news coordinators in Brussels, the PTT and television organisations participating have twice collaborated with every success to prove that a daily exchange of newsfilm on the Eurovision network is an actual possibility. The EBU has shown that it is able to put up a remarkable performance in the field of programme exchanges, both from the technical and the administrative angles. There is every justification for giving warm thanks to all those who contributed.

It was an extraordinary experience there in the Dome of the Palais de Justice, where the technical coordination of the programmes took place, to see how quickly the European countries were linked to one another and to follow the friendly conversation and the exchange of news and opinions among persons who realised that they were sharing in a great joint venture. It would have been particularly reassuring for all who have at heart the idea of European cooperation to have been present.

On 9th and 10th June a meeting of the sub-group and a number of other competent persons was held in Brussels. The purpose was to discuss the results of the second experiment. At this meeting the question also arose as to what opinion should be submitted to the Programme Committee and the Technical Committee with regard to the subject of regular exchanges. The outcome of the second experiment had also seemed very satisfactory, at least as far as the technical and administrative aspects were concerned.

And so, after noting the results of both experiments, the study group reached the following conclusion:

> " In the interests of a full and rapid exchange of filmed news for television, it is necessary to institute at the earliest possible opportunity the regular daily use of the Eurovision network."

But in order to do this it will be necessary to solve a number of problems which did not cause too much trouble during the short trial periods but will require to be settled definitely when exchanges are instituted on a permanent basis. The plans and proposals on the

subject were dealt with in Brussels and are to be submitted to the competent EBU authorities. The problems, which can only be indicated briefly here, include:

(a) The fact that the national television organisations do not have the same agreements with their respective PTT administrations. In some countries exchanges of newsfilm under existing agreements do not involve large sums of money; but in others the use of the national network and the use of international communications are calculated separately, which gives rise to heavy additional expense for the organisations in question.

(b) The absence in some countries of communications independent of those used for national programmes, so that the times when newsfilm can be exchanged are regulated according to whether there is a national programme on the air at that moment. As a result, it was found that news items which ought to be exchanged as late as possible in the afternoon or in the early evening were being exchanged in the early afternoon, which is scarcely desirable from the news point of view.

(c) The need to prevent the use of the material broadcast over the network for purposes other than those of the programmes of the participating organisations, without the consent of the organisation from which the material originates.

(d) The question of discovering how the network could be used by television organisations wishing to receive important items from a news agency to which they subscribe.

(e) The sharing in the costs of the communications by organisations not taking a direct part in exchanges but benefiting from them indirectly (associate members on the other side of the Atlantic).

(f) Staff accommodation and the need to increase the number, among others at the Technical Centre, and also for the coordination of news items submitted and requested.

Quite a number of problems, you may say. But it would be a pity if too much time were spent in dealing with these aspects which taken together are no simple matter. Eurovision needs to expand; the network is not used often enough yet and this keeps the cost per hour at too high a figure.

The regular exchange of news, although on a small scale at first, has the power to become a new driving force to encourage the use of this instrument placed in our hands by the technicians—the Eurovision network linking so many countries and nations in Europe. We should be failing in our duty if we left it idle, and it would be against all logic if we were not to use it for the transmission of important items of news.

INCREASE IN THE NUMBER OF TELEVISION LICENCES IN EUROVISION COUNTRIES
(January 1954-January 1959)

Country	1954	1955	1956	1957	1958	1959
Austria	—	457	1,420	3,795	16,324	49,238
Belgium	15,000	40,000	72,000	130,000	200,000	223,427
Denmark	1,157	2,624	8,187	43,905	113,360	213,987
France	63,102	125,008	260,508	450,000	683,000	988,594
German Federal Republic	15,485	84,278	283,805	622,024	1,211,935	2,125,130
Italy	28,000	88,327	178,793	345,000	674,401	1,098,899
Luxembourg	—	480	500	1,200	2,500	4,000
Monaco	—	1,200	1,500	2,000	2,800	3,000
Netherlands	8,500	15,000	70,000	99,466	239,019	391,036
Sweden	600	1,500	7,000	12,000	86,790	244,479
Switzerland	1,200	4,900	10,507	19,971	31,374	50,304
United Kingdom	3,105,644	4,155,989	5,261,699	6,433,417	7,760,794	8,899,067
Total	3,239,000	4,520,000	6,156,000	8,163,000	11,023,000	14,291,000

NEWS AND INFORMATION

INTERNATIONAL

FÉDÉRATION INTERNATIONALE DES CHASSEURS DE SON (FICS)

International Amateur Recording Contest, 1959. — This contest, which originated on the Continent, was at first confined to French-language competitors and that is why of all its names the one most widely used throughout the world is the French *(Concours international du meilleur enregistrement sonore - CIMES)*. For seven years it has been organised in turn by Switzerland, France and Belgium; this year it is the United Kingdom which takes up the torch. The crossing of the narrow sea channel is the symbol of a new extension of the competition and its continuing spread. There are growing signs too of the increasing importance this international event is acquiring. Apart from the continued rise in the number of countries participating in the contest and consequent increase in the number of competitors as well as the variety of the entries submitted, two facts should be ample proof of this growth: *(i)* the BBC has appointed as its representative in the international jury which is to meet in London this autumn Mr. Douglas Cleverdon, one of the finest British radio producers and twice winner of the Prix Italia; *(ii)* one country alone—France—is offering 1½ million francs in prize money. Everything points to a great international contest, which will run from 1st June to 15th September.

As in previous years, amateur sound recorders from every country, irrespective of origin or whether they belong to a national society that is a member of the FICS, will be able to compete in the following categories: *(a) Montage* (radiophonic creation, radio drama, sketch, etc.) with a maximum duration of 15 minutes; *(b) Documentaries and reportages*, 10 minutes; *(c) Music or spoken word* (soloists, choirs, orchestras, songs, monologues, poetry, imitations, etc.), 4 minutes; *(d) Pictures in sound* (scenes taken from life, unusual voices, exceptional reports, etc.), 4 minutes. Competitors may submit entries for several categories. The only one in which there is a set theme is the fifth, which is reserved for school groups using the tape recorder; this year the subject selected is: " How we imagine other countries to be ". For the first time a place will be reserved for stereophonic recordings.

The international address of the 1959 Contest is as follows: International Amateur Recording Contest, 7 Tudor Street, London E.C.4.

Jean Borel
Secretary General of the FICS

UNDA

International Catholic Television Meeting. — In February of this year the second International Catholic Television Meeting took place at Monte Carlo [1]. This very important event was followed with great interest by the delegate from the Holy See, Mgr. A-M Deskur, under-secretary of the Pontifical Commission for the Cinema, Radio and Television. Their Serene Highnesses Prince Rainier and the Princess of Monaco showed, by their presence, their active sympathy for the endeavour of the International Catholic Association for Radio and Television (UNDA) which is renewed every year and finds a growing response in television organisations.

The very framework of UNDA's activities called for a meeting of this kind. It seemed, indeed, useful if not indispensable to enable the experts and those responsible for religious broadcasts to compare their respective efforts and to pool the results of their experiments.

The results of the Monte Carlo meetings can be stated even now; they represent, first and foremost, a platform, a cross-roads where each television producer demonstrates the manner in which he believes the evangelical message, Catholic doctrine, liturgical life, Church history, etc., can best be interpreted and presented to viewers.

New technique—new language. If religious truth remains changeless, television requires the producer to create a means of expression the form of which can vary with the sensibility, the culture and the genius proper to each people. Mass, for example, whose liturgy is identical in the world of Latin rite, is presented in different ways by its choice of imagery, rhythm, etc., according to whether it comes from Italy or Holland.

This pooling of efforts by those responsible is followed by discussions. At Monte Carlo the specialists agree, to some extent, to learn from each other, to compare their points of view and to seek out together the ways to the best productions. The documents can be placed at the disposal of the producers who, in their turn, can use them for their broadcasts. A fruitful exchange which ensures economy of methods and time.

In order to lend a more concrete attraction to the " Meeting ", prizes in the form of bronze doves were awarded for films and telerecordings.

In creating the " Monte Carlo Meetings " UNDA has done the work of a pioneer in religious television broadcasting. As in all innovations, imperfections gradually make their appearance and have to be corrected by experience. This does not prevent us from following with sympathy these attempts at sharing efforts and we wish the organisers an ever-increasing success.

Canon Jacques Haas

[1] See *E.B.U. Review*, No. 55 *b*, p. 15.

NATIONAL

BELGIUM

Annual Grand Prix of Radio Plays. — To promote the production of radio plays, the French Broadcasts Section of the Institut National Belge de Radiodiffusion (INR) has instituted an annual competition to be known as the *Grand Prix du Jeu Radiophonique.*

The 1959 competition is open to French-speaking writers irrespective of nationality and entries will be accepted up to 1st October. Works which should on principle have a duration of not less than 30 and not more than 60 minutes must be original French plays designed specially for broadcasting. The prize of 40,000 Belgian francs will be awarded by a jury of seven members appointed by the permanent committee of the INR and the Administrator-Director General of French Broadcasts, and the winning play will be broadcast by the INR.

A copy of the regulations may be obtained from the INR. Entries should be sent to the Directeur des Emissions Parlées Françaises de l'I.N.R., 18 place Flagey, Brussels, or in the case of writers in the American continent to Radio Canada, Boîte Postale 6,000, Montreal.

CZECHOSLOVAKIA

International Radio Competition. — The Czechoslovak Radio has asked us to announce the organisation of the International Radio Competition *Lidice 1960* for the best radio programme. The contest is open to members of broadcasting organisations and authors of works for radio in any country who desire to submit programmes which have already been broadcast by a radio station. Further details can be obtained from: Ceskoslovenský Rohzlas, Stalinova 12, Prague 12. The authors of the three winning programmes will be awarded a fortnight's tour of Czechoslovakia.

GERMANY (Federal Republic)

Decisions of the ARD. — At its general meeting at the end of May the *Arbeitsgemeinschaft* of the Federal German broadcasting organisations admitted the Saarländischer Rundfunk as an ordinary member of the ARD.

The meeting confirmed the decision of the conference of the *Intendanten* which stated that the Norddeutscher and the Westdeutscher Rundfunk had decided on the construction of a second television network and that corresponding decisions by the other broadcasting organisations were under discussion.

The question of financial equalization *(Finanzausgleich)* payments to the Sender Freies Berlin [1] was satisfactorily settled.

From 1st July the broadcasting organisations will broadcast an all-night programme, mainly of music, on medium waves throughout the Federal Republic for the benefit of night-workers.

[1] See *E.B.U. Review*, No. 53 *b*, p. 26.

GREECE

General Outline of Broadcasting. — According to Greek law the organisation, administration and operation of the country's broadcasting network lies exclusively with the Hellenic National Broadcasting Institute (HNBI).

The owners of radio sets in private households pay a yearly licence fee amounting to 160 Drachmae, and the number of licensed listeners increases by 50,000-70,000 each year. The total number of licensed radio receiving sets has already reached 600,000, *i.e.* one receiving set per 13 inhabitants. It is estimated that in ten years' time the number of licensed receivers will be three times as high.

The main goal of the HNBI throughout its programmes is the education of its listeners. The programmes are planned not only for recreational purposes and for the information of listeners about everyday events, but also to make known the cultural tradition of the nation as well as contemporary spiritual and social problems as they stand in relation to those of other countries, in order to demonstrate the mutual influence of the Greek and international civilisations.

A series of programmes presents: *(a)* the problems and ideas which set the world's spiritual life in motion; *(b)* achievements in science and art; *(c)* personalities from the worlds of art, letters and science who express their views on subjects of vital interest. These broadcasts are presented in various forms ranging from simple talks to discussions.

The Institute presents 3 plays each week of which one is Greek, another chosen from the classical or the contemporary repertoire and the third an adaptation of a well-known work in contemporary Greek or foreign literature. Three symphony concerts are also broadcast every week, one given by the Athens State Orchestra, one by the HNBI's own orchestra and the third by the New York Philharmonic Orchestra specially recorded for the HNBI. In addition to the above broadcasts the HNBI transmits serial programmes from the outstanding works in Greek literature. There is also a daily programme covering art, science, philosophy, history, Greek folklore and customs of the Greek people and of those in foreign countries.

Special attention is paid by the Institute to its broadcasts for children and young people for whom about 14 appropriate programmes of 15 to 20 minutes' duration are given each week. There are also daily broadcasts for farmers which, as well as covering subjects of immediate interest to them, give useful advice on hygiene, clean-

liness, the rearing of the young, odd jobs about the home, etc. A daily programme for women not only covers subjects of primary importance to housewives, working women, young wives and mothers, but also gives talks on the activities of women from all walks of life, on home economy, the upbringing and education of children, home decoration, etc.

A special place in the HNBI's programmes is reserved for religious broadcasts of which there are six each week. The purpose of these broadcasts is: *(a)* to strengthen religious feeling by explaining the Gospel and other holy texts and by relaying processions from churches; and *(b)* to obtain the widest possible diffusion of the Christian way of life.

In sending us this information on their service the HNBI stresses that there is an almost complete balance between broadcasts of socio-political education, those of an instructive nature and those which are purely recreational.

IRAN

Progress in Broadcasting. — The General Department of Publications and Broadcasting of the Imperial Government of Iran has sent us the following brief account of the ground covered by Radio Iran during the past nineteen years.

In 1940, in accordance with the wishes of His Imperial Majesty, the late Reza Shah the Great, Radio Iran was inaugurated by the then Crown Prince, now the Shahinshah of Iran, Mohammad Reza Shah Pahlavi.

During these nineteen years, Radio Iran has played an important part in all the events of the country. Until 1953, for a variety of reasons, it was unable to introduce all the necessary technical improvements. Afterwards, however, under the auspices of His Imperial Majesty Iran began to move rapidly towards a better future. Only then was it possible for the country to make useful plans based on scientific principles. Radio Iran brought in a three-year development scheme as a result of which many improvements were introduced. The General Department of Radio and Broadcasting sent several students to the USA for training in independent management, and a class was formed for the preparation of radio announcers.

The new studios inaugurated recently are the fruits of the hard work which marked these three years. Construction was begun in 1957 by a foreign company on a site given by the Ministry of the Interior. The American Operation Mission in Iran advanced credit to the value of 13,125,000.00 Rls. A sum of 7,650,000.00 Rls. was spent on construction and the remainder on technical equipment. All this was installed by Iranian engineers. The building comprises a large hall, three studios, three control rooms, eight administrative offices, a repair shop and special archives for records. The modern organisation of the Pars News Agency—information office, teleprinters and library—was financed out of the 1953 budgetary reserves.

Under the special patronage of His Imperial Majesty and with the assistance of the Ministry of Posts and

The inauguration of the new studios of Radio Iran in the presence of the Shahinshah of Iran

Telegraphs, five powerful transmitters are to be set up in different parts of the country.

IRELAND

Report of the Television Commission, 1959. — The 20-member commission set up last year [1] has recently published its report, which runs into 70 pages.

After referring to the special problems of television in Ireland—the competition from BBC and, by the end of 1959, ITA transmissions from Northern Ireland, the uneven distribution of the Irish population, the desire for a bilingual service, the standard of living in Ireland in relation to that in Great Britain—the report takes up the question of finance and estimates that an organisation undertaking to provide a national network of five main transmitting stations with connecting links and a programme centre would need to have available capital of the order of £1,500,000. On the basis of 30 programme hours a week, consisting on average of 25% live programmes and the balance of filmed or tape-recorded material, annual running costs are estimated at £650,000 (£300,000 for managerial, technical and other fixed charges, £350,000 for programmes). The two chief sources of revenue would be licence fees and advertising. In May 1958 the number of television sets in Ireland was estimated at 20,000; the Commission accepted the conservative estimate that in the third year of operation of a television service this total would have risen to 120,000, bringing in a net licence revenue of £330,000 on the basis of an annual fee of £3. It would, in the Commission's opinion, take probably 7 or 8 years at least for the number of licences to reach a figure which would provide sufficient income to cover the estimated costs, not counting the likely rise in costs by that time.

The Commission is satisfied that the outlook for commercial television in Ireland is not a pessimistic one, and there are grounds for the view that television advertising should be able to secure revenue of an amount equivalent to about 10% of existing advertising expenditure in Ireland. It would not be over-optimistic to expect that net advertising revenue of the order of £350,000 at least would be obtained in the third year. The Commission points out that, while the foregoing estimates are necessarily tentative, they are sufficiently realistic to provide a basis for consideration, and believes that a television service based on a reasonable licence fee and advertising revenue would probably show a profit about the third year of operation, assuming full national coverage at that stage.

The report then states that none of the groups or individuals who made proposals to provide an Irish television service were interested except on the basis of a monopoly. The Commission doubts the practicability of establishing a television service within its terms of reference otherwise than on that basis.

Of the three ways in which it is possible to establish television in Ireland, one—a public service financed from public funds and licence fees—could not be considered under the Commission's terms of reference which specified that no charge should fall on the Exchequer. The Commission was not satisfied that a proposal received to introduce television as a public service financed by licence fees and advertisements but with no assistance from the Exchequer would be satisfactory. If, therefore, Ireland is to have a television service, and in existing circumstances the Commission does not accept that Ireland can afford to be without its own television service, it follows that such a service must for the present be provided as a private enterprise, financed mainly by revenue from advertisements. While the Commission at this stage advocates the establishment of a television service on the basis of private enterprise, it further recommends that " if and when the circumstances favour a change over to a basis of public service, this should be done unless by that time experience has shown that the present misgivings associated with a system based on private enterprise are unfounded ".

Strong approval is expressed of the decision of the Government, set out in the Commission's terms of reference, to vest the control of Irish television in an Irish public authority. Recommendations are made as to the constitution, power and duties of the Authority which should be defined by statute. The Authority should take the form of a Board composed of nine members, and the operating organisation should be permitted to be represented by having one member on the Authority. Members should be appointed by the Prime Minister on the advice of the Government for a fixed term of 3 years, 3 members retiring each year in order that public opinion and sentiment should be adequately reflected.

Advisory committees should be appointed by the Authority to give advice on religion, national culture and language, the form and content of advertisements, the welfare and education of children, and agriculture; but the power to obtain such assistance would not relieve the Authority of the ultimate responsibility.

The gross amount of licence revenue less expenses of collection should be paid to the Authority; under no circumstances should licence fees be paid direct to the operating organisation.

As the future development of television cannot easily be forecast it is suggested that the television statute should lay down a specific date when it will expire unless extended by Parliament.

On the subject of the relationship between television and radio, the Commission inclines to the view that, " in principle, broadcasting in Ireland, whether it take the form of radio or television, should be under the control of a single broadcasting Authority. The Commission is, however, firmly of the opinion that for some years to come it is not only desirable but necessary that Irish

[1] See *E.B.U. Review* No. 49 *b*, p. 14.

television and radio should be controlled by separate and independent bodies". Radio Eireann should be fitted as far as possible to.meet and deal with the new situation; it should be so constituted as to have equal standing with the television service and as much freedom of action in the field of administration as the latter, and also its financial resources should be improved. As the new television service will fully occupy the attention of the Television Authority, the Commission recommends that the control of the radio service be for the present vested in a separate but similar public authority.

It should be the duty of the two Authorities to ensure that such resources as can be shared—for example the news service, and perhaps technical staff—should be shared to the fullest extent possible.

The Commission recommends two types of licence fees, one a combined fee for television and radio not exceeding £4, and the other for radio alone, the present sum of 17s. 6d. being increased to £1.

Next discussing programmes, the Commission considers that at the start there should be a minimum of 21 programme hours per week with a gradual stepping up to 50. As for the time allotted to advertising, a general maximum of six minutes per programme hour for "spot" advertisements should be prescribed, but ten minutes in any one hour could be permitted subject to an overriding daily maximum calculated on the basis of six minutes per programme hour. As a general rule advertisements should be in the form of "spots" in the programmes, but the Authority could permit specific programmes to be broadcast on a sponsored basis if they met certain requirements. The rules restricting advertising generally in any other medium in Ireland should also apply to television. No advertising material should be associated with any news broadcast.

A high proportion of the programme material should be of Irish origin and should adequately reflect the national culture and outlook. Television would seem to be one of the most effective mediums for the implementation of the national policy in regard to the Irish language, and the Commission suggests ways in which the use of Irish can be furthered through the programmes.

The Commission puts forward the general requirements which the Government should lay down as a basis of negotiation with the operating organisation on such points as the length of the contract period, the time limit for national coverage, etc., and recommends that the operating organisation should take the form of an Irish registered company any change in the control of which would have to be approved by the Authority.

Various members of the Commission expressed reservations on specific points of the Commission's findings, and these are set out the end of the report. Four members submitted a minority report contending that the revenue required had been seriously underestimated.

The recommendations of the Commission relating to line standards are described in *E.B.U. Review* No. 56 *a*.

The Government will be considering the Report in due course.

LEBANON

Introduction of Television. — The Lebanese television service was officially inaugurated by the Prime Minister on 1st June, according to a report in *The Times*. The station, which is located in Beirut, has two studios at present and two channels—one of which is for programmes in English and French—and is the product of Lebanese private enterprise and Anglo-French technical assistance.

The radius of the station is estimated at about 50 miles and it is expected to provide good reception along the length of the Lebanese coastline, covering most of Lebanon's 1½ million inhabitants.

We shall be publishing a full account of this new service in one of our coming numbers.

SWITZERLAND

Administrative Director of the SSR. — The Central Committee of the SSR has appointed Mr. Domenic Carl to the position of administrative director as successor to the late Mr. Georges Conus. Mr. Carl was until now SSR programme director and has belonged to the general directorate since 1949.

UNION OF SOUTH AFRICA

SABC Annual Report 1958. — This report was tabled in Parliament on 11th May, 1959.

The revenue for the year totalled £2,177,218, which was £200,000 more than in 1957. The revenue is mainly from two sources: listeners' licences—£1,318,799; and gross revenue from the Corporation's Commercial Service—£779,284. The greatest single item of expenditure is £907,317 for artists' fees and programme expenses. Engineering expenses account for £342,348; and administration and general expenses for £388,016.

The steady increase in radio licences continues, as figures for the last five years show: 1954—707,622; 1955—730,176; 1956—779,428; 1957—854,338; 1958—907,417.

The net revenue per licence is a fraction over 29 shillings. The Corporation granted the following concessionary licences: 742 free licences to hospitals, charitable and educational institutions; 1,919 half-crown (2s. 6d.) licences to blind persons and indigent invalids; and 1,673 ten-shilling licences to inmates of homes for the aged and infirm.

Development. In February the Corporation took transfer of Broadcast House, Johannesburg. Steps were taken to modernise and adapt the building, and particularly to provide more studio space, as this building has to cater for four parallel programme Services, the

English and Afrikaans Services, the Commercial Service (Springbok Radio) and the Bantu Service. On the technical side the Corporation decided to abandon conventional designs and to plan and construct fully transistorised studio equipment.

International contacts. The Corporation's Director-General, Mr. Gideon Roos, visited the EBU headquarters in Geneva, and attended the conference of the Union's Legal Committee in Germany during September. Two SABC engineers attended the Interim Study Group meetings of the CCIR in Geneva during July and August.

Programmes. Since the SABC Symphony Orchestra was founded in 1954 there has been a steady development of music. The Orchestra's activities in 1958 embraced many public and studio concerts, as well as increased efforts to stimulate interest in good music among young people. The Orchestra gave 82 public concerts; of these 19 were symphony concerts, 34 lunch-hour concerts, 8 youth concerts, 4 massed school concerts, and 17 were held at schools in and around Johannesburg. Five symphony concerts were held in Pretoria, and 19 were broadcast from the Johannesburg Studios.

Solo artists featured in many orchestral concerts and recitals. Chamber music was presented by several famous groups from abroad and by the SABC Studio Orchestra.

A landmark in the broadcasting of opera was the presentation of *Asterion*, the radiophonic work by Henk Badings of Holland. This was specially commissioned by the SABC. The music was supplemented by electronically produced sounds and effects. The libretto was by the well-known South African poet, N.P. van Wyk Louw.

Sport. Many famous foreign teams and individual sportsmen performed in the Union. Sporting events abroad were covered, and listeners heard commentaries on important international boxing matches in Canada and Britain. The tour of Australia by the British cricketers aroused much interest and, with the collaboration of the Australian Broadcasting Commission, ball-by-ball commentaries on the Test Matches were broadcast.

UNITED KINGDOM

New BBC Division. — A new Division, the Legal Adviser's Division, has been created. It will comprise The Solicitor's, Programme Contracts and Copyright Departments.

Mr. E. C. Robbins, C.B.E., has been appointed Legal Adviser as from June 22nd 1959 and will be succeeded as The Solicitor by Mr. L. P. R. Roche.

Part A (Technical) of E.B.U. Review No. 56

contains the following articles:

The functioning and utilisation of special-effects equipment in television, by G. Stump;

" Precision offset " in varying field-frequency, by Dr. Ing. R. Busi;
Broadcasting in Ghana.

There are also topical notes concerning the technical activities of broadcasting organisations in various countries, notably: the television networks in Belgium, television outside-broadcast vehicles used in the Netherlands and Sweden, the film-synchronisation centre of the NTS, the BBC television outside-broadcast base in Scotland, the first newsfilm exchanges by transatlantic cable between Canada and the United Kingdom, the celebration of the fifth anniversary of Eurovision, television frequency allocation problems in the United States, the Report of the Irish Television Commission;

together with a report on conditions in the European long- and medium-wave broadcasting bands as at 1st July 1959, and accounts of recent meetings of technical working parties, including the first meeting of Working Party S (stereophonic broadcasting) and a meeting of the Rengelink sub-group dealing with the daily newsfilm exchange scheme.

LEGAL SECTION

THE LEGAL PROBLEMS OF FILMS AND TELEVISION

by Professor Dr. K. BUSSMANN, Hamburg

I

The constant increase in the number of television viewers[1] makes it more apparent every day that motion pictures and television are genuinely competing with one another. I do not propose to expatiate on the economic aspects of this competition and will instead confine myself to a study of the legal problems that emerge from the coexistence of the two media. Both motion pictures and television are influenced to a considerable degree by the existing copyrights of third parties, and the question immediately arises as to what extent copyrights or ancillary rights may subsist or be created in cinematography and broadcasting themselves and may affect this reciprocal relationship. Above and beyond all this, there may from time to time be clashes based exclusively on the law of unfair competition.

II

I do not think my purpose would be best achieved by stating the problems in purely theoretical terms; I will therefore describe some conflicts that have actually occurred, to show where the problems lie and the sort of disputes that may be engendered. It goes without saying that the future may reveal a host of other sources of conflict; however this may be, a whole series of problems can be examined in the light of the following examples.

(1) In the days when television was still in its infancy and micro-wave links were still prone to technical hitches, the programme transmitted from Hamburg was not coming through to Cologne one evening because the link between the Hamburg studio and Cologne was out of order. In the transmitting room at Cologne a few films were lying around, among them one called *Der träumende Mund*, the première of which was to take place in a few days' time. It had only been sent in with a view to the transmission of short excerpts for publicity purposes. The man on duty in Cologne, trying to fill the resultant gap in the programme by running a film, unfortunately picked this particular reel. This led to an action for damages in respect of an alleged falling off in box office receipts, for which the broadcasting station was ultimately held liable.

(2) When the World Football Championships were being played off in Stockholm a number of cinemas in the Federal Republic of Germany announced that they would show the television broadcasts of the championship matches from Sweden at specified times by means of their television projection equipment. As some of these cinemas considered themselves to be explicitly authorised to exhibit pictorial coverage of sporting events and other news, an action was brought to determine whether such relays were lawful [1].

(3) The television Service broadcast in 1958 a television lottery in aid of the Berlin Children's Relief Appeal. These broadcasts, made up partly of announcements of the lottery, partly of the draw itself and partly of announcements of the winners, all bore the title *Kleine Leute - Grosse Reise*. The delegate of the Children's Relief Appeal who produced this programme for television as a free-lance employee had proposed that a "hit" song should be composed with the same title. This song was written by a lyric writer and a composer and was brought out by a music publishing firm. It was not possible to clarify the agreements entered into by the representative of the television organisation and the authors of the song, at least as regards the copyright in the title. The music publishing firm turned this song over to a motion picture company for a film and gave the film company permission to use the words *Kleine Leute - Grosse Reise* as the title of the film. The distributing agency endeavoured to make publicity for the film by reference to the universally known television broadcast [2].

(4) The heir of Arthur Schnitzler assigned to an American motion picture company "the exclusive silent, sound and talking motion picture rights" in the dramatic work *Liebelei*, which is still in copyright. The

[1] Herbert T. Silverberg, in an article entitled "Authors' and Performers' Rights" in *Radio and Television*, Part II, 1957, p. 125, reports that the number rose in the United States from 17,000,000 in 1952 to 44,000,000 in 1957. In the Federal Republic of Germany there were 1,500 viewers in 1953, 125,000 in 1955, some 1½ million in 1958 and there are nearly 2½ million at the present time.

[1] In the meantime the Hamburg *Landgericht* (15.0.187/58) has enjoined performances of this nature. The judgment is not yet final. See *E.B.U. Review* No. 55b, p. 29.

[2] Both the Hamburg *Landgericht* and the Hanseatic *Oberlandesgericht*, in proceedings for an interim injunction, have declared it illegal to use the title or make reference to the television programme. Cf. UFITA, Vol. 27, p. 77. See *E.B.U. Review* No. 53b, p. 41.

contract contains a clause authorising them " to televise any motion pictures based on the play by means now known or hereafter to become known ". The television rights in this play were subsequently assigned to the broadcasting organisation. The television organisation broadcast the play live, but at the same time made a kinescope of the play in order to make a repeat broadcast. The American motion picture company is asserting its rights in relation thereto.

(5) These cases illustrate some of the problems that may arise out of the co-existence of motion pictures and television. They are partly problems of copyright and partly problems of unfair competition. The first question that arises is whether and under what circumstances motion pictures or television are justified on considerations of copyright in borrowing and using each other's works; the second question is that of the relationship of motion pictures to television on the plane of unfair competition, and whether claims can be preferred on the basis of the law on unfair competition for borrowing, infringement of title or " tie-in " publicity.

III

If we consider the copyright aspect, we must now distinguish between *(i)* the rights of authors vis-à-vis cinematography and television, *(ii)* the rights accruing to authors in the films or television programmes themselves, and *(iii)* the rights in such films or programmes that may vest or be created in the motion picture companies or the broadcasting authorities.

Of chief significance are the copyrights of authors whose works are televised as they stand or are adapted for cinematography and television, *e.g.* the rights of scenario writers, the rights of composers of film and television music (whether written specially for a film or composed for other uses and incorporated in a film or transmitted as part of a television programme), and the rights in the photographs which belong to the cameramen, together with the rights inhering in the film maker under Section 15 of the Copyright (Protection of Artistic Works) Act.

Other rights which must be taken into consideration are those of the performers who by their performances record a work on phonograms. I refer to the fictitious adapter's copyright under Section 2 (2) of the present Copyright (Literary Works) Act as well as to the rights which the *Referentenentwurf* proposes to confer on performers generally, *i.e.* on the musicians and actors who interpret the work for films or television. Finally, regard must be had to the rights which vest in the broadcasting organisation or the film company in respect of the finished television programme or the finished film. In the case of television a further distinction must be made between live broadcasts that are not recorded on any film or phonogram and broadcasts which are simultaneously recorded with a view to repeat performances or which are produced as a television film from the outset because a live broadcast is out of the question.

It so happens that these rights are not mutually exclusive; they subsist side by side and overlap one another, and in certain circumstances some are dependent upon others. It will consequently be necessary to examine them separately in order to demonstrate the extent to which the individual rights may conflict.

IV

It goes without saying that works in copyright may only be used for cinematography or television if the relevant rights of exploitation have been assigned by the proprietor of the copyright or the authorised collecting society. This applies equally to the music incorporated in the film or television programme and to the scenario or the literary works on which the television show or film is based.

I do not wish to go into the question of the respective importance attaching to the acoustical and visual components in cinematography and television. In this connection Berthol and Hartlieb [1] speak of a " *Tonbild* " —a sound-image — in which the predominant element is the visual one, as in the case of sound films. In the nature of things this emphasis may shift in special cases, where the musical component will take precedence, *e.g.* in television broadcasts of recitals, concerts or popular tunes.

The principal difficulties arise out of the fragmentation of the individual authorisations and out of the fact that there is frequent uncertainty as to who controls the various commercial rights of any given author.

The rights in question are the right of reproduction, the right of publication, the performing right and the broadcasting right, and it should be noted that the film rights and the television rights should be considered separately. The foregoing is true both of literary and of musical works. As a general rule, all these rights are not held by the author but by collecting societies or other authorised agents, who derive their rights from publishing agreements or other types of contract. It is extremely rare for all the rights to be exercised by the same person or entity.

Except in the case of theatrical works, the reproduction rights in literary works will be controlled by the publisher, but this is not necessarily true of the film rights or the right to use the work on television. The latter rights may rest with the publisher, but they may also still be in the possession of the author or his heirs. In the case of dramatic works the reproduction rights and the performing (*i.e.* theatrical) rights are generally held by the publisher, although here again the cinema rights and television rights may still be held by the author.

While literary works—whether of a narrative or a dramatic character—can only be used for motion pictures in an adaptation, however, dramatic works may be

[1] *Filmrecht*, p. 347, and the authors cited in notes 2 and 3 of that page, on the details of copyright in sound films and television, especially its factual basis and the relation between the two media. Cf. Schmidt de Simoni: *Studien zum Fernsehurheberrecht*, pp. 50-56.

televised either in their original form or in the form of an adaptation. In other words, the utilisation of a work in cinematography necessitates the making of an adaptation in every case, whereas in some cases only stage directions adapted to television are required to perform the work on television.

In addition, the making of a film always implies recording on an optical or acoustical support, *i.e.* a process which as far as the acoustical element is concerned constitutes a fictitious adaptation within the meaning of Section 2 (2) of the Copyright (Literary Works) Act. On television this holds good only when the broadcast is not given live. The transfer of motion picture rights does not automatically include the television rights, even those to televise the film made on the strength of the production contract in question.

In the case of musical works we have at one and the same time the music publisher for the sheet music, GEMA for the performing rights *(petits droits)*, BIEM for the mechanical rights and the theatrical publisher for the theatrical rights *(grands droits)* in operas and musical comedies. These rights are not by any means granted jointly for motion pictures and television, and are frequently granted piecemeal in this case also. In many instances, indeed, the individual was not quite clear which rights he was granting, a situation which came about owing to the fact that the rights in many works were transferred at a time when people did not have television in mind and therefore chose a form of words which lent itself to varying interpretations. In certain circumstances, therefore, the mandatary who concludes the agreements with the film company is not in a position to grant the television rights because they are no longer in his possession. This difficulty arises not only in Germany but in other countries as well; in the United States, for example, the problem was dealt with in the Ettore case. The issue in this case was whether the broadcasting of a film with the omission of certain passages several years later was an encroachment on the boxer's rights. The Court took the view that a general assignment of rights at a time when television rights were immaterial would not include such rights unless they were specifically mentioned, and was therefore bound to " treat the absence of the new or unknown media as about the equivalent of a reservation against the use of the work " [1]. In an article entitled *Television and Commercial Films* Guéritat discusses the whole problem [2] and indicates that the authors on the advice of their societies reserve their television rights on principle and draw up their contracts accordingly.

When a film company produces a film on the strength of the rights it has been granted and releases the film for exhibition through a distributing agency, this transaction operates quite smoothly as a rule because all the necessary authorisations have been procured. This however does not mean that a film produced pursuant to these authorisations may be given to a television organisation for broadcasting purposes without further formality. As regards the music, however, the difficulty is removed by the fact that only *petits droits* are involved, and both broadcasting and television organisations have secured the television broadcasting rights in the film music under their lump-sum contracts with GEMA.

The legislation now in force is of little help in the face of this multiplicity of possible uses and this variety of agreements and contracts, because the purely copyright statutes lay down no presumptions for exploitation and the Publishing Act makes no provision for this type of utilisation at all.

At the present time the controversy centres around the fictitious adapter's copyright deriving from Section 2 (2) of the Copyright (Literary Works) Act. It can probably be assumed that these rights arise directly in the performer and are dependent on the author's rights in the copyright work only in so far as the utilisation of the phonograms, films, etc., on which the work is recorded requires permission from all the right-holders, *i.e.* both the author and the fictitious adapter. Apart from this the actual scope of the fictitious adapter's copyright is in dispute. It is likely that the matter will not be finally elucidated until the Copyright Bill has been enacted into law or until the Federal (Supreme) Court has unequivocally decided all the relevant issues. In the latter event, however, it should be remembered that judgments decide only the specific case in action, and are law only as between the parties thereto.

De lege lata one can only express the hope that all concerned will endeavour to word their agreements as clearly and comprehensively as possible. For instance, in the *Liebelei* case mentioned above it is doubtful what the clause on the motion picture rights in the dramatic work in the introductory provisions of the contract is intended to cover with respect to the broadcasting rights. Does the further provision " to televise any motion pictures " merely mean that the film company is to have broadcasting rights in this particular film, which would be reasonable enough, or does it actually mean that the company shall have the right to televise any visual fixation of the work whatsoever, even a recording made by the broadcasting organisation for the purposes of a television broadcast? It seems hardly possible to construe this provision as a power of veto over a live broadcast.

De lege ferenda it is particularly desirable that further fragmentation of the rights should not be encouraged in any way. In the provisions on cinematograph films the *Entwurf* already contemplates the granting of a number of rights *en bloc*; the Act should go farther and should lay down that in the event of no mention being made of

[1] United States Court of Appeals, No. 11,503, 11/I/1956, Albert Ettore *v.* Philco Television. The summing up of the legal position in this case is of interest: the Court terms the legal basis " as reliable as a haycock in a hurricane " and Silverberg, *loc. cit.*, says " the result is clear enough, the ground on which it protected performers' rights is not."

[2] *EBU Review*, No. 52 *b*, p. 26.

specific uses there should at least be a presumption of a general, over-all cession. There can be no doubt that such a provision would obviate many unnecessary disputes and thereby render valuable services to the authors themselves. It goes without saying that there is no intention to cause any prejudice to the financial interests of the authors; the idea is only to avoid the necessity of going to court to determine which rights were actually granted in a particular case or to which collecting society the fees are to be paid. It is even worse when these obscurities result in an injunction against the exhibition of a film, or when finished audio-visual fixations either of the film or of the broadcast have to be destroyed.

V

The foregoing considerations relate only to the rights of authors, their successors in title or their mandataries vis-à-vis cinematography or television. Another question that arises is whether these two parties, *i.e.* the film maker or the broadcasting station, can by direct action restrain each other from turning the productions of the other party to account. In other words, can the film maker forbid the television organisation to broadcast a film, and can the television organisation prohibit the projection of television broadcasts on the screen in cinemas on the basis of purely copyright considerations? Such prohibitions can of course be imposed, on condition that the film maker or broadcasting organisation bases its claims on a derived right. Furthermore, the enforcement in one's own name of other people's rights presupposes the existence of a legally valid assignment or authorisation covering the use in question. At the same time consideration should be given to the possibility of enforcement on the strength of rights over the film vesting initially in the film maker or rights in the television broadcast inhering in the broadcasting organisation.

(1) To the extent that motion picture and television interests base their proceedings to enjoin the appropriation of their work by the other party on derived rights, the content of the various rights must be defined with precision, and here again the distinction between the two institutions is of some significance. Television will tend more often to transmit dramatic works in their original form, while both radio and the cinema will present literary works in forms adapted to the particular medium. The contents of the licences or assignments will therefore vary accordingly; in the first case the right transferred is the right to perform the stage play, while in the others an adaptation contract is involved. According to the judgment of the Federal Court of 15th April 1958 in the *Privatsekretärin* case [1], the law on publishing may in individual cases be applied to other copyright contracts as well. This, however, presupposes that the relationship between the interests of the parties corresponds in essence to the relationship which the relevant provisions of the Publishing Act are intended to regulate. In the opinion of the Federal Court this may apply particularly to the warranty of title in a film agreement containing a compulsory exploitation clause. Moreover, there is a fundamental difference between a film agreement and a publishing agreement, in that the former is concerned not with the reproduction of a completed work in unchanged form, but rather with a special kind of adaptation of that work, and the grant of permission to make it into a film. Thus a change of form is implicit in every film agreement, and this likewise holds good when the television organisation turns a work into a screen play or a film.

The position is different again when it is not a question of an agreement for a screen adaptation but rather of an assignment of a finished film scenario.

Both the motion picture rights and the television rights in a literary work presuppose that an adaptation will be made by other hands, and thus if both sets of rights are disposed of, two or more entirely separate works may come into existence side by side, according as the subject matter is converted into a film or a television play. Past experience has shown that very different films may be produced when the motion picture rights are granted to different producers. If however the work is in dramatic rather than narrative form, it is possible to use it unchanged in a television performance, though an adaptation of the stage play may be made for television in the same way as for motion pictures. Depending on the course that is adopted, enforcement of the rights by motion picture or broadcasting interests will necessitate the assignment of one or more copyrights, *i.e.* in the first case that of the author or his collecting society, and in the second that of the actual adapter as well.

(2) In the case of musical works neither the film industry nor television will be authorised to exercise the performing rights, because these performing rights are generally controlled by GEMA, which means that GEMA collects royalties in respect of performances of sound films in cinemas and of television shows on receiving sets in hotels, cafés, etc. It follows that the film industry cannot restrain the television organisation, and *vice versa*, from appropriating productions on the grounds of an infringement of the rights in the compositions in question. It is as yet impossible to foresee whether literary rights will one day be controlled by an authors' society in the same way as musical rights, which would mean the collection of additional royalties from cinemas and in respect of the public reception of television programmes. Should the authors of literary works assign their rights of recitation, where such rights are provided for by law, in the same way as the composers, it would no longer be possible for film or broadcasting interests to proceed by way of injunction, since the over-all assignment to the collecting society would preclude any exclusive licence. These conclusions are based solely on copyright considerations; special contractual arrangements, where such are possible, may yield different results.

[1] *GRUR*, 1958, p. 504 - *UFITA*, 1958.

(3) The prohibition against performances of television shows in cinemas or against the transmission of a film by the television organisation may also be based on the assigned rights in the photographs.

Section 3 of the Copyright (Protection of Artistic Works) Act expressly states that the words " photographic works " include works produced by a process analogous to photography. The cameraman who shoots a film unquestionably acquires a copyright of his own, and it is submitted that the same right must be conceded to the man behind the television camera. The very wording of Section 3 lends itself to this meaning, since " photographic works " include works produced by a process analogous to photography. In the case of a live television broadcast, however, there is no fixation of the picture by optical and chemical means, but only an incorporeal transmission by optical and electrical means. But, apart from the technical details, the cameraman's work and the demands made on his artistic eye are the same in both cases. Accordingly the individual television images enjoy statutory protection within the meaning of Section 3 of the Act as works produced by a process analogous to photography, even though they are not fixed in a material form [1].

Whether *de lege ferenda* this right will remain a true copyright or whether it will be assimilated to the ancillary rights is another question. In the latter event there would also be the possibility, as already provided for in the *Entwurf*, that the right would vest in the employer or person giving the commission as first owner [2]. These are, however, secondary questions, and do not affect the possibility of initiating proceedings for unauthorised use on the basis of the rights in the photographs.

(4) In the event of the conversion of running commentaries, the reporter's right of recitation may also be invoked. It is the generally accepted opinion that copyright may subsist in running commentaries [3]. The commentaries accompanying a television broadcast in particular often amount to an original and creative work, since they are not confined to a recital of certain facts. The relevant provision is Section 1 of the Copyright (Literary Works) Act, under which copyright may subsist in lectures or addresses given for purposes of instruction or entertainment, though admittedly there will seldom be any question of edification. There is thus a significant difference between running commentaries and ordinary " newscasting ", which merely reports the facts. It is true that the right of recitation is limited *de lege lata*, but it invariably subsists for such time as the work remains unpublished, which is always the case with running commentaries. The unauthorised performance of a running commentary broadcast on television is an invasion of copyright. The provisions of the Newsreel Act cannot be invoked to justify such appropriation either, because that enactment merely makes an exception in respect of the works in copyright which become audible or visible in the course of the event depicted in the newsreel.

(5) With respect to borrowings of films with a plot, Section 15 (*a*) of the Copyright (Protection of Artistic Works) Act affords grounds on which protection can be claimed. This right can only be enforced, however, in relation to cinematographic works or works produced by a process analogous to cinematography which on account of the combination of events portrayed can be regarded as individual works of artistic creation. In this case the copyright also extends to the pictorial reproduction of the story in a changed form. The author is granted the exclusive right to perform the work in public. Having regard to the very narrow wording of this text, these provisions can only be applied in cases where the television broadcast or cinematograph film really has a definite plot, and hence hardly ever to pure reports of sporting events or similar functions. The copyright brought into existence by Section 15 (*a*) does not vest directly in the film maker or broadcasting corporation; it goes instead to the person who fashioned the plot for the cinematograph film or television broadcast into a distinctive and creative work. This person may be the author of the scenario, but he may also be the director, when the work has been produced without a scenario. Hence in this instance as well the film interests and broadcasting organisations would be in a position to enforce their claims only if the rightful owner of the copyright had assigned the claims in question to them.

(6) There is no provision in existing German legislation for a copyright or ancillary right in television broadcasts, and indeed the law as yet contains nothing on broadcasting and television at all. Nevertheless a special right might arise in certain circumstances in an artistically composed broadcast, just as an independent copyright can arise in a collective work or an adaptation.

VI

In addition, the film industry and the broadcasting organisations may on occasion invoke rights assigned to them by the performers. This is not the place to embark on a discussion of the importance attaching to performers' rights. I have already indicated above that the scope of these rights is currently in dispute, and that a Supreme Court ruling is not yet to hand. It is likewise common knowledge that the draft Copyright Bill provides an entirely new set of rules on this point, according to which the rights accruing to performers would no longer be regarded as copyrights and would be classed as ancillary rights instead. It is yet to be determined what the scope of these rights will be, and the matter is also the subject of current negotiations at the international level. The pros and cons of these rights are being energetically canvassed both in Germany and elsewhere, with the

[1] Cf. Hubmann, in *GRUR*, 1953, p. 320, note 35; Schmidt de Simoni, *Studien zum Fernsehurheberrecht*, 1956, p. 101.

[2] It is already accepted that the proprietor is entitled to the copyright in cases where photographic works are produced commercially by employees under the supervision of the proprietor. Cf. Ulmer, *Urheber- und Verlagsrecht*, p. 313.

[3] Cf. Kohler, *Urheberrecht*, p. 193; de Boor, *Urheber- und Verlagsrecht*, p. 112; Ulmer, *loc. cit.*, p. 171.

authors and their societies in the forefront of the opposition. All I should like to say on this point at the present juncture is that the new rights are the centre of a national and international tug-of-war. It is not yet apparent to what extent these rights may be asserted independently, or to what extent they may be assignable and hence enforceable through the agency of a collecting society. I will therefore confine myself to a brief exposition of the problems.

The existing provisions of Section 2 (2) of the Copyright (Literary and Musical Works) Act state that if a literary or musical work is recorded by means of a personal performance on contrivances for use with instruments whereby sounds may be mechanically reproduced, the contrivance so produced shall be considered the equivalent of an adaptation of the work. This section accordingly does not cover reproduction *via* a visual fixation; it is confined to reproduction *via* a phonogram, since the text refers only to the reproduction of sounds. In other words, Section 2 (2) must be left out of account in those cases where television exhibits a silent film, or where a silent television programme is borrowed by motion picture interests. On the other hand copyright does subsist in the music, the spoken performance or the spoken word, and it inures to those who interpreted the music or spoke the words. Here too the artists performing the music have become affiliated to a collecting society and have assigned their performing rights to that body. It follows that where such an assignment has been effected and found to be legally valid, the motion picture and broadcasting interests are no longer in a position to litigate on the basis of derived rights. The position is different with respect to the spoken word and also in the case of the commentator, who not only possesses a copyright in the commentary he gives but also has a fictitious adapter's copyright under Section 2 (2) in the performance as such, by means of which he fixes his commentary on the contrivance for reproduction. In television broadcasting, however, it is usual for the commentary to be a live transmission, in which case no recording on a *corpus mechanicum* is involved. Since a television broadcast of this nature may then be projected on to the cinema screen without the intervention of any recording, Section 2 (2) can no longer be invoked. It would hardly be possible to make this section apply to a live broadcast in the same way as we found Section 3 of the Copyright (Artistic Works) Act to apply to the live pictures.

VII

The *Entwurf* further provides for the film maker and the broadcaster to be invested with a right of their own, though not in the shape of the usual copyright; for the film maker it will be a copyright of a special kind, while for the broadcaster it will take the form of an ancillary right. The juridical nature of the right to be granted in the film is still in dispute. I do not wish to dwell in this article on the extensive controversy that this problem has evoked, particularly the question whether a genuine copyright or merely an ancillary right should be granted in the film and whether it is possible to regard the film maker as the presumptive author. It can, however, be safely said that whichever course is adopted in the new Bill the two institutions are bound to be granted rights of their own which will among other things make it possible for them as of right to restrain unlawful appropriation, whether this be the performance of television broadcasts in cinemas or the unauthorised televising of films. Moreover, some arrangement of this kind imposes itself, because irrespective of copyright considerations we are dealing here with the products of creative effort, the unauthorised abstraction of which is contrary to every sentiment of justice.

The complications I have described will perhaps be appreciated more clearly in relation to the use of audio-visual fixations originating from abroad, particularly if it is borne in mind that there is a great diversity in the treatment of these rights in foreign countries. These differences spring from fundamental matters, *e.g.* the extent to which the rights of the authors of the pre-existing works used in the film or broadcast continue to operate, and the entitlement (or non-entitlement) of the film maker or broadcasting company to rights of their own in the work. This chaotic diversity is also the reason why the Council of Europe took the initiative in preparing a Convention designed to facilitate the exchange of television films and to establish a presumption which will remove the more glaring disparities in this field [1]. This " European Agreement concerning Programme Exchanges by means of Television Films " was concluded on 15th December 1958 and has since been signed by a number of States [2].

VIII

Hitherto we have discussed the possibility of conflict from the copyright standpoint, but it is also possible to examine the problem in terms of the law on unfair competition. We are here concerned with Section 1 of the Unfair Competition Act prohibiting unfair competition that is contrary to public policy, and specifically with the rule deriving from this general clause which forbids the unjust appropriation of the work of others.

(1) In the beginning there was much dispute whether motion pictures and television were in a relationship of competition within the meaning of the Act. The fact that the broadcasting institutes are chartered public corporations, that the tasks assigned to them fall within the sphere of public administration and that they possess a monopoly, was construed in some quarters as meaning that they could not be held to be competitors within the meaning of the Unfair Competition Act, particularly as they were not in business for profit-making ends. In the few judgments relating to this point that have been delivered to date the view is expressed that the broad-

[1] A very thorough *exposé* of these differences is given in the Memorandum which the EBU submitted to the Council of Europe in January 1958.

[2] Straschnov has made a penetrating analysis of this Agreement in *Droit d'Auteur*, 1959, p. 40.

casting companies are business enterprises and are established and operated as such, and that they may stand in a true competitive relationship to other undertakings. Thus both the Hamburg *Landgericht* and the Hanseatic *Oberlandesgericht*, on appeal, have held, with specific reference to the relationship between cinematography and television, that there exists an undeniable state of competition between the two institutions [1].

This state of competition is determined by the economico-legal relations existing between the two media, films and television. Without going into the intensity of these mutual relations, it would be hard to deny that there are points of convergence between the spheres of interest of the two institutions. The mere existence of such a relationship constitutes competition and justifies the use of competitive tactics, irrespective of the status of the broadcasting institutes as a public utility corporation at public law. This is particularly true when the broadcasting company, in order to achieve its objects, avails itself of the methods of private business and private law, as is particularly the case with programmes consisting of entertainment. It follows from the above that the broadcaster is in his right to resist unlawful competition by others by recourse to the remedies of private law, just as he himself is subject to the rules of fair competition in his own acts and devices whenever he is competing with the cinema.

(2) As stated above, unfair competition *contra bonos mores* is most likely to take the form of misappropriation of the work of others. Such misappropriation exists when television broadcasts are used without prior authorisation in cinemas or when films are similarly broadcast on television, thereby taking advantage of the fruits of other people's labour. The projection of television broadcasts in cinemas is nothing but a systematic exploitation of the efforts of the broadcasting agencies coupled with an economy in expenditure which would normally have to be borne by the cinemas. Only a short while ago the Federal Court [2] stated afresh its views on this problem of the misappropriation of the work of others; its findings were that it was conduct contrary to public policy deliberately to derive advantage from another person's goodwill. The important thing is not so much to protect the product of the work as such, but rather to prevent the irregular utilisation, *i.e.* the direct misappropriation, of this work by third parties. When the principles enunciated by the Federal Court are applied to the body of questions under consideration, it will be apparent that such misappropriation is present in these unauthorised, if reciprocal, borrowings.

(3) Actions for unfair competition may arise out of the use of the same title or a title so similar that it may lead to confusion.

It is true that it is established upon the authorities that in certain circumstances a title may enjoy copyright protection as well, as for example when it constitutes an act of original creation on its own merits, *i.e.* a work within the meaning of Section 1 of the Copyright (Literary Works) Act. But such titles are few and far between, and consequently the use of an identical or colourably imitated title is in practice seldom the subject of proceedings for infringement of copyright.

A further source of protection for titles is to be found in Section 16 (1) of the Unfair Competition Act. This provision contains a prohibition in terms against the use of the particular appellation of a printed publication in the course of business in a manner calculated to cause confusion with the particular title legitimately used by another publication. Section 16 (1) of the Unfair Competition Act refers in this connection only to the title or appellation of a printed publication, as this provision, when originally drafted, was designed to apply to the products of the book publishing trade. However, both the courts and the authorities have long since recognised that protection must likewise be granted to the titles of films and theatrical works [1].

Extrapolating on this generally accepted legal interpretation of the purpose and meaning of Section 16 (1) of the Act, the Hamburg *Landgericht* and the Hanseatic *Oberlandesgericht*, in their judgments on the *Kleine Leute - Grosse Reise* case, both considered the title of a television broadcast to fall within the scope of Section 16 (1). If the cinema denotes a different work by the same title used for a broadcast on television, it will in so doing commit an infringement of Section 16 (1) of the Unfair Competition Act.

This is not the place to explore the other question which played a part in this case, namely whether protection for titles applies only to works properly so called, or whether a television lottery or the promotion of a television lottery will fill the bill as title-bearer. The only thing that matters is the fact that titles of television broadcasts as well as titles of films are eligible for protection under the law on unfair competition, and that the use of an identical or potentially confusing title is likely to give rise to a lawsuit under Section 16 (1) of the Unfair Competition Act.

Similarly, a television organisation would infringe Section 16 (1) of the Act by designating a television play or other broadcast by a title previously used by a film maker for a film and in which protection still subsisted.

Special problems can arise if the author of a work, say a play or a novel, makes over his screen rights to a film company and his television rights to a broadcasting organisation and both perform their own adaptations of the work. If the title of the original work is used, as in the *Liebelei* case, neither the broadcaster nor the film maker can restrain the other from using the title on the grounds of priority of use, since the original work already bore the title. The position is, however, different if a special title—in the *Liebelei* case the title *Christine*—

[1] Cf. the judgments cited in footnotes on page 24.

[2] Federal Court ruling of 21st November 1958. Col. I ZR 61/57 - *Nelkenstecklinge*.

[1] Baumbach and Hefermehl, *loc. cit.*, 7th ed., section 16, footnote 96.

is chosen for the film; in such a case the television organisation would obviously not be entitled to apply the title *Christine* to the television programme based on its own adaptation.

(4) In the same way, it is an act of unfair competition for a film distributing firm to make an explicit " tie-in " with a television broadcast while at the same time using the title of this broadcast for the film. It would be equally unlawful for television to use the goodwill of a film for publicity purposes when it was not permitted to televise the film itself, but was entitled to take the plot of the film as the subject matter for a television play because the television rights had been acquired from the original author. In the first place, such action would deceive people into thinking that the film and the television broadcast had the same subject matter, that both benefited the same interests and that some business connection existed between them. In addition, it would be using the reputation of others for one's own business ends. Admittedly, an attempt by a competing party to turn the work or services of a competitor to his own advantage is not *contra bonos mores* in principle, but such behaviour is in breach of competition when the deliberate intention behind it is to exploit the public's association of quality with the distinctive features of the merchandise or service in question, with which the public is familiar, to boost his own wares.[1]

Independently of the possible danger that the risk of confusion may adversely affect the good name of the competitor or of his wares through no fault of his own, and hence occasion actual loss to him, the type of exploitation described above in itself constitutes the same misappropriation of the goodwill and work of others as unauthorised borrowing does, and is equally contrary to public policy.

IX

Generally speaking, unfair competition proceedings between motion picture and television interests are not likely to present any special complications, and redress will be in keeping with the demeanour of the competitors in the past. To this extent their respective legal positions will be those of any other competitors.

Nevertheless, the *Kleine Leute - Grosse Reise* case cited above shows that even in this field considerations of copyright may obtrude themselves upon the judgment. Although the title dispute was purely a question of unfair competition and was tried as such in the lower court and on appeal, the depositions show that copyright considerations may at times be a contributory factor. In the case in point this is apparent from the fact that in both works a " hit " tune was used, the rights in the words and music of which belonged to their respective authors. The title of the " hit " tune coincided with the chorus line of the tune, which did not originate with the lyric writer but was suggested by the person who had got up the broadcast for television and who, according to the lyric writer, had relinquished his copyright in this line to the lyric writer. In the proceedings for the interim injunction it was not possible to establish the facts of the case as such in an altogether satisfactory manner. No agreements in writing were produced, and in particular no proof could be adduced that the right to use the title had been ceded to the lyric writer or the composer unconditionally, to wit, so extensively that the title could be conveyed away as the title for a film. The authors of the song were undeniably within their rights in parting with the screen rights to the tune itself, but in so doing they were not entitled to give the film company the authorisation to give the same title to the film, especially when the designation of a film by this title was an invasion of the competitive rights of the television organisation. After the negotiations with the publisher of the tune, however, the film company had taken it for granted that he was empowered to assign the title. All this only goes to show once again how necessary it is in each case for all the parties to define unequivocally which rights belong to the individual and which rights are merely handed on, and in particular which rights may be further assigned. It is accordingly highly desirable in every case to make searching enquiries and where applicable to demand documentary confirmation before embarking on investments—which both in cinematography and in television may run into very considerable figures—in reliance upon assignments which in fact are unable to convey any genuine right.

X

The competition between the two institutions is still a new thing in Germany, and in point of fact it is only now becoming noticeable, what with the incessant complaints by the exhibitors that the growth in the number of televiewers is causing a falling off in cinema attendances. This development will not strike at the vitals of the cinema, for the cinema, like television, has its own justification and its own tasks to perform. Cinematography will subsist alongside television, just as the theatre has already amply demonstrated its *raison d'être* alongside the cinema and television.

The grim economics of competition, however, force us to establish clear fronts and well-marked boundaries, and hence also to pay more careful attention to the legal foundations on which they stand. Since in almost all of their presentations the motion picture industry and television are dependent on the rights of all sorts of people it is inevitable that the true whereabouts of these rights should be methodically checked. This is a field in which the legislature can give little lasting help. With respect to individual rights a few precise instructions might perhaps be of assistance, though the financial returns to the authors must in no way suffer in the process. Something, too, could be done by means of statutory presumptions. But the bulk of the work will always fall to those who in films and television are compelled to create their works in dependence on copyright.

[1] Cf. BGHZ 5, p. 1 ff. - Hummel.

NEWS AND INFORMATION

COUNCIL OF EUROPE

Third Session of the Committee of Legal Experts on the Exchange of Television Programmes. — The Committee of Legal Experts, which some time ago prepared the European Agreement concerning Programme Exchanges by means of Television Films [1], held its third session in Strasbourg from 29th June to 1st July 1959 at the call of the Secretary-General of the Council of Europe. Eleven member countries of the Council of Europe sent government representatives, the Government of Switzerland was represented by an observer and several governmental and non-governmental international organisations attended the sittings. There were three items on the agenda, namely *(i)* consideration of the agreement between the EBU, the International Publishers' Association and the first two Federations of CISAC concerning the problem of the delimitation of repertoires; *(ii)* unification of European legislation in regard to the protection of television broadcasts, and *(iii)* miscellaneous items.

The main question which, as was to be expected, took up most of the discussion was the second item, for this involved laying the groundwork for the international protection of television broadcasts in Europe, an urgent problem if ever there was one and a subject which in the absence of express legislative provisions has already given rise to much difficulty and was the issue in the case recently tried by the Hamburg *Landgericht* [2] as the court of first instance. Before examining the question on its merits, the Committee of Experts had first to consider the scope of its terms of reference as defined by the committee of Ministers and whether it was desirable to contemplate bringing the matter under regulation now, without waiting for the Universal Convention for the protection of ancillary rights. Only after answering these two liminary questions in the affirmative did the Committee begin its consideration of the principles which should underlie the proposed instrument, taking as a guide the existing two draft Conventions in the field of ancillary rights. By drawing on this material the Committee managed to draw up a whole list of rules which should be written into the projected European treaty. Television broadcasts should be protected against retransmission, fixation and communication to the public, with certain exceptions to enable national legislatures to limit the protection having regard to the purposes for which broadcasts are used. Broadcasts would be brought within the protection of the Convention by either one of two tests, namely whether the television organisation falls within the jurisdiction of a country that is a party to the treaty, or whether the broadcast is made from such a country. Protection would not lapse before the end of a period of ten years. The protection established by the treaty would be a minimum only, and in addition any other source of law which could be relied upon to protect those broadcasts would remain unaffected. The protection of television broadcasts would in no way affect the rights of other holders of copyright in the broadcasts, e.g. copyright proper, performers' rights, the rights of record manufacturers, film makers, etc.

As is usual in such a context, certain governments entered reservations or recorded their specific interpretations of the various problems under discussion. One government held that before proceeding further the Committee should seek new and explicit terms of reference from the Committee of Ministers, and further that it would be more expeditious to await developments concerning the Universal Convention on ancillary rights before embarking on a regional treaty, even though it was confined to protection for broadcasts.

After adopting a general report for submission to the Council of Ministers the Committee adjourned its work with a view to resuming it at the call of the Secretary-General of the Council of Europe.

The Chairman of the Committee was Professor Bodenhausen (Netherlands), assisted by Professor Eugen Ulmer (Federal Republic of Germany), the Vice-Chairman. The general report was prepared by Mr. Lenoble (France), the Rapporteur of the Committee.

AUSTRIA

The Latest Austrian Judgment on Outside Aerials.— The detailed discussion of the legal problems of outside aerials which appeared in the August 1958 issue of the *E.B.U. Review* (No. 50 *b*) contained a reference to the special statutory position prevailing in this field of law in Austria and the fact that at that date the " aerial question " had never been finally settled by the Austrian courts.

Since then the question of aerials has come up in the Supreme Court for the first time, and the much awaited judgment has now been delivered by the highest judicial authority for Austria. As it is extraordinarily favourable to the overwhelming majority of radio listeners and the television audience in particular, and as the arguments adduced therein should be of interest to everyone, even in other countries, the grounds for this judgment are given below in their essentials.

The Court proceeded on the basis that the erection of an outside aerial on a block of flats by the tenant of one

[1] See *E.B.U. Review*, No. 53 *b*, p. 40.

[2] See *E.B.U. Review*, No. 55 *b*, p. 29.

of the flats should be deemed to be an " alteration to the tenement " and hence considered from this angle in law. The Austrian Rent Act contains a special section (Section 18) on the subject of such " alterations to the tenement ", the provisions of which are as follows:

(1) The landlord cannot prohibit the making of alterations to the tenement which do not require an official building permit and either correspond to the customs or usages or serve some material interest of the tenant, provided that such alterations do not entail damage to the house or prejudice the lawful interests of landlord or tenant, especially by impairing the outward appearance of the house, or constitute a danger to life and limb. The cost shall be borne by the tenant.

(2) The laying on of electric light and power, gas, water and the telephone in particular shall be deemed to be alterations within the meaning of subsection (1) above.

(3) On the expiry of the tenancy the tenant shall restore the property to its former state, unless an agreement is reached to the contrary.

(4) If the alteration involves the use of parts of the house which the tenancy does not entitle the tenant to use, the tenant shall upon request pay the landlord a reasonable consideration for such use.

This legislation—the material features of which have been in force in Austria for the last 50 years—had already been construed by the courts as not allowing the landlord to prevent the tenant from erecting an outside aerial (e.g. a roof aerial, loft aerial, window aerial, mast aerial, etc.) precisely because such an aerial can only be held to be an " alteration to the tenement " which is in keeping with the customs or usages and serves a material interest of the tenant.

The question newly settled by the above-mentioned Supreme Court judgment which has just been promulgated was whether the landlord is entitled to demand a single or even a regular payment for permitting or suffering the tenant to erect such an aerial.

The Supreme Court has now denied the landlord any right to demand any payment whatsoever under this heading, and has done so, moreover, on the authority of Section 18 of the Rent Act cited above.

Subsection (4) of this provision, it will be remembered, requires a reasonable consideration to be paid at the landlord's demand if the " alteration to the tenement " —i.e. the installation of the aerial on the roof or in the loft—encroaches upon parts of the house which may not be used by the tenant on the strength of his lease. This language has lent itself on numerous occasions in the past to the mistaken interpretation that an appropriate payment must be made by the tenant in respect of the aerial—when installed on the roof or in the loft—since by virtue of his lease the tenant only acquires rights to the apartment and its appurtenances (cellar, attic, etc.), but is not in a position to assert rights to the roof or loft, as the case may be. This tentative interpretation of the statute has now, however, been declared totally erroneous by the Supreme Court, which has taken the view that the tenant's lease entitles him not merely to the flat but also to certain rights of user over other parts of the building external to the apartment itself, in so far as these are in practice necessary to enable him to enjoy modern standards of gracious living. The point is that the landlord is obliged under any parol or written lease, whatever its specific contents, to allow the tenant to enjoy a contemporary standard of home comfort—and this does not merely mean that electric light and power, gas, water and the telephone should be made available to him, but also means that he should be guaranteed proper, interference-free reception of sound radio and television. Under these circumstances, therefore, it is the right of every tenant to utilise the roof or the loft to erect an aerial, a right which he automatically acquires upon his first payment of the rent. Admittedly this view is tenable only so long as the aerial is not of such an extraordinary type that it substantially spoils the outward appearance of the house, or presents a safety hazard. Naturally there is little chance of the former occurring nowadays, when outside aerials of all kinds and television aerials in particular are part of the everyday scene in towns all over the world and are taken for granted; and any danger to life and limb is out of the question if the aerials are put up by competent specialists.

As one might imagine, this sensational decision by the Supreme Court has brought much rejoicing in radio circles and among house tenants generally. This realistic judgment has rendered it superfluous to approach the legislature to promulgate special legislation or regulations on the question of outside aerials, as has been necessary in some other countries in recent years.

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FRANCE

Interpretation of Article 9 of the Berne Convention. Judgment of French Supreme Court. — On 17th May 1952 a Brazilian publishing firm, O Cruzeiro, published in one of its magazines some photographs taken by two of its staff photographers. Shortly afterwards, on 25th May 1952, these same photographs were reproduced without permission and without payment by *Radar*, an illustrated tabloid published in Paris by Editions Nuit et Jour, a French concern. When the Brazilian company brought suit against Editions Nuit et Jour for damages in the Commercial Tribunal of the Seine (Paris) the court dismissed its action. The Paris Court of Appeal took a different view of the matter and gave judgment against the French firm. The latter's appeal from this judgment to the *Cour de Cassation* was dismissed in a judgment handed down on 5th May 1959.

The case was common enough in itself, and would not be worthy of mention here if it had not involved an interpretation by the French judicial bench of Article 9 of the Berne Convention. It will be recalled that this

Article consists of three paragraphs; the first paragraph expressly grants protection to " serial stories, tales *(nouvelles)* and all other works... published in... newspapers or periodicals "; the second sanctions the reproduction by the Press of articles on current economic, political or religious topics unless the reproduction thereof is expressly reserved, while the third states that this protection shall not apply to " news of the day or to miscellaneous information *(faits divers)* which is simply of the nature of items of news ".

The defendant company had argued that the photographs it had reproduced should be treated on the same footing as the news of the day or *faits divers* referred to in paragraph 3 of Article 9 of the Convention, and that they should be denied protection. The Supreme Court declared that the provision in question, being a denial of protection of any sort, constitutes an exception to the general principles of the Convention and should therefore be construed restrictively; for that reason it was inadmissible to apply by analogy the exemption granted to news of the day and miscellaneous information.

This finding has an immediate bearing on broadcasting. At the Rome Revision Conference in 1928, the Broadcasting Subcommittee which was considering the inclusion of a new Article 11 *bis* in the Convention thought fit to mention in its report that " if reproduction is lawful (e.g. if a newspaper article may be reproduced under the provisions of Article 9), the author would not be entitled to sue for damages on the grounds that the reproduction was by way of broadcasting ". In other words, the Sub-committee was of the opinion that the exemption granted under Article 9 for reproduction from one newspaper to another or from one magazine to another automatically extended to use on broadcasting. The above-mentioned judgment of the French Supreme Court runs counter to this. If it is true that Article 9, being an " exception " clause, must be construed strictly, the broadcasting organisations cannot rely upon it because the only express reference in the provision is to reproduction by the (written) Press. In view of the fact that some of the authorities maintain that the preliminary deliberations and reports on a Convention cannot be held against the actual text of the Convention, it is evident that a revision of Article 9 is called for if it is desired to establish beyond doubt that what is permissible for a newspaper is equally permissible for " newscasting " on the radio.

GERMANY (Federal Republic)

Use of Phonographic Records for Motion Picture Sound Tracks. Judgment of the Hamburg Landgericht. — The question which the Hamburg *Landgericht* had to answer in its judgment of 18th December 1958 was whether a record manufacturer who was a party to the BIEM/Record Industry standard contract could license a film maker to copy records on to the sound track of a film without the prior authorisation of the holder of the synchronisation rights.

The Deutsche Grammophon G.m.b.H. had authorised film makers to re-record commercial records manufactured by it on cinematographic film, and had included a stipulation in the contract to the effect that the film maker was solely responsible for the observance of copyright regulations and undertook to secure, in addition to the authorisation given by the manufacturer, the authorisation of the copyright holder, *i.e.* GEMA.

BIEM thereupon sought an injunction against the manufacturer requiring him to cease and desist from such an operation without its consent. BIEM's case was that the manufacturer by so doing had overstepped the authorisations granted to him under the standard contract. The latter contract merely authorised him to make mechanical reproductions of the works in the BIEM repertoire, to copy these recordings and to offer the copies thus made for sale to the public for exclusively private use. Section IV of the standard contract expressly excluded reproduction for the purposes of accompanying a visual performance of any nature whatsoever, and hence the manufacturer could not part with rights that he himself had not acquired. Generally speaking an adapter, whether real or fictitious, can exploit his adaptation only to the extent that the rights of exploitation are granted to him by the original author.

The defendant company argued that BIEM was not the holder of the right to use the works in question in the sound tracks of films and could not on that account take unto itself the right of prior authorisation in connection with the use of works in films. Furthermore, the defendant had granted authorisation to incorporate the works into a film only on the strength of the fictitious adapter's copyright assigned to him by the performer, and the film maker had been expressly told to obtain the consent of the author of the work thus adapted. As for the standard contract, this document governed only the mechanical rights, and it could not govern the use made of the reproduction thus authorised. The publishing rights, for example, did not give their holder the power to forbid the use of the book to prop up the legs of a rickety table. The mechanical rights ceased to be effective once the copies were put into circulation. Lastly, Sections IV and V of the standard contract, which forbade broadcasting, public performance and the use of the work in sound tracks, were intended only to show that the rights relating to these operations were not covered by the standard contract. The BIEM was therefore unable to prevent these rights being obtained direct from those persons who were their rightful holders.

In its judgment, the Court enjoined the defendant from allowing film makers to copy the mechanical contrivances made by the defendant reproducing works in the plaintiffs' repertoire on to the sound tracks of films without the plaintiffs' consent, unless the film makers obtained the necessary authorisation from the holder of the synchronisation rights.

In the grounds for its judgment the Court included the following points:

(1) Generally speaking BIEM is the holder of the synchronisation rights, as appears from the broad drafting of its rules and regulations. However, in its internal dealings with those whom it represents, the BIEM is required to consult the original holder of copyright before granting licences or authorisations. This restriction follows from the wording of the mandates in question, and its purpose is to prevent cases of double transfers of the same rights.

(2) The restrictions imposed on the manufacturers by the standard contract with respect to sale to the public for private use are limitations on the rights of exploitation and not merely on the use of copies. Even if it is true that the defendant cannot control the use made of his records by the purchaser and cannot be held responsible for copyright infringements committed by the purchaser, he is not permitted to perform operations which go beyond the authorisation granted under the standard contract.

(3) Undoubtedly there vests in the manufacturer a fictitious adapter's copyright for which he can demand a fee. However, he is not in a position to authorise without BIEM's consent the reproduction of records on film sound tracks, and if he does so he will be exceeding the rights he obtains from BIEM. In this connection the provisions of the standard contract are quite clear.

(4) The adapter's copyright is subordinate to that of the original author. The adapter cannot turn his adaptation to account without the authorisation of the author of the work thus adapted. It does not follow from the standard contract that the original copyright holder had given permission for the use of the adaptation in motion pictures.

(5) The clause in the contract between the defendant and the film makers is not enough, because it does not state that the permission to use the work in a sound track is valid only if the holder of the original right has given his consent *beforehand*. It follows—and this is the essence of the judgment—that the manufacturer cannot authorise the copying of his record unless he has first satisfied himself that the authorisation of the holder of the synchronisation rights has been obtained.

Moral Rights of Performers. Judgment of Munich Oberlandesgericht. — After the judicial recognition—and in some countries the legislative recognition—of a right in one's likeness (the *jus imaginis*), it looks as though things are moving in the direction of recognition of a right in one's voice (which might be called the *jus vocis*), similarly derived from the right to intangibility of the person. It happens in both film-making and television that a film will be shot in a silent version and a sound track dubbed in afterwards ; in this dubbing process, which is done for technical aesthetic or linguistic reasons, the actions depicted are put to words spoken by persons other than those who will appear on the screen. So far as is known to the Editor, there has not hitherto been a lawsuit involving this aspect of motion picture making and television, and that is why the judgment summarised below is of outstanding importance.

The action was brought by a film actor who considered himself aggrieved by a producer on account of the fact that the latter had had the part played by the plaintiff dubbed in by someone else, not in a foreign language but in the original language of the film. Giving judgment on 7th August 1958, the Munich *Oberlandesgericht* found for the plaintiff, granted an injunction to restrain the exhibition of the film and awarded damages. There is no appeal from this judgment.

The judges based their decision on the general right to the intangibility of the person, holding it to be an absolute right enforceable against all comers. This right is infringed when one actor's voice is replaced by the voice of another, because this amounts to " a breach and a distortion of personality ". Emphasising the fact that the dubbing was done in the original language of the film, the Court rejected the arguments which the defence sought to draw from the customs and usages of cinematography and the business interests of the film maker. It confined itself to a finding that the contract between the parties made no provision for such dubbing, and that the plaintiff had consequently not given his assent to this encroachment upon his personal rights.

Parts of the judgment are commented on in *Film und Recht*, an interesting publication put out by the Institute of Film Law, whose headquarters are in Munich.

UNITED KINGDOM

Ephemeral Recordings. Decision of the Performing Right Tribunal. — Section 6, subsection (7) of the recent British Copyright Act provides that where by virtue of an assignment or licence a person is authorised to broadcast a literary, dramatic or musical work, he or she may make reproductions of it solely for the purpose of broadcasting the work without the authorisation of the holder of the mechanical rights and without paying a fee. The same subsection forbids the making of any further reproductions from the recording thus made and requires it to be destroyed before the end of a period of 28 days from the day on which it is first used.

When Southern Television Ltd., one of the programme contractors to the ITA and the applicants in this case, applied to the Performing Right Society Ltd. (defendants) for a contract covering the right to broadcast the world-wide repertoire of the Society (which controls *petits droits*), the latter made it a condition that the applicants should undertake not to record any work in the defendants' repertoire without authorisation of

the holders of the mechanical rights. The purpose of this clause, as was subsequently admitted before the Tribunal, was to compel the applicants to forgo the benefit of the above-mentioned provision on the subject of ephemeral recordings.

Taking the view that it was unreasonable to insert such a stipulation in the contract with the defendants, the applicants referred the matter to the Tribunal for it to determine, in accordance with the Copyright Act, the terms for the applicants' use of the defendants' repertoire which it considered to be reasonable in the circumstances. The BBC made itself a party to the reference on the applicants' side, although in its contract with the defendants it had agreed to a clause expressly designed to contract out of the subsection on ephemeral recordings. On the defendants' side, three organisations administering mechanical rights in the United Kingdom, namely the MCPS, the MRS and the Sound Film Music Bureau, applied to be made parties to the reference. The ITA itself and the other programme contractors, on the other hand, did not intervene in the case.

The Tribunal refused to consider whether or not the applicants were actually entitled to avail themselves of the statutory provision on ephemeral recordings, holding that this question was not relevant to its award. The issue was clear: either the applicants were not in any event entitled to benefit under the said provision, in which case the clause was superfluous, or else they were entitled to claim for themselves the right to make ephemeral recordings, in which case the disputed clause was intended to deprive them of an advantage which Parliament had seen fit to grant them. If Parliament found it expedient to invest someone with a certain right, the inference was that the right was a reasonable one, and that it was accordingly unreasonable to seek to compel the beneficiary to waive it. The clause at issue would not be out of place in a contract if the party whom it deprived of a statutory advantage agreed to its inclusion, but in the case before the Tribunal, the applicants had refused to assent to such a clause. It was therefore the duty of the Tribunal to find that this clause should be deleted and that it should not be included in the contract offered by the defendants to the applicants.

The Tribunal incidentally refuted two arguments put forward by the defendants. The latter had maintained that when Parliament had written ephemeral recordings into the Act, it had certainly not intended to enable the beneficiaries of this provision to enrich themselves at the expense of the holders of the mechanical rights, and, if they were now deprived of the possibility of recouping their losses directly, there was nothing to prevent the defendants from doing so on their behalf through the conditions it imposed on those contracting with them. The Tribunal held this to be a fallacious argument, pointing out that if Parliament had wished to prevent any impoverishment of the holders of mechanical rights, it could easily have abolished the requirement of prior authorisation for ephemeral recordings but nevertheless make them attract a fee. And that was precisely what it did not do.

The defendants further took the point that their contracts with other ITA programme contracting companies obliged them to grant the same advantages to the latter companies as they might be required to accord to the applicants, by virtue of the " most-favoured-nation clause " written into these contracts. The Tribunal likewise rejected this argument, noting that it would not be reasonable to put the applicants at a disadvantage merely in order to save the defendants trouble for which they themselves were responsible as the result of contracts which they had entered into of their own free will and to which the applicants were not a party.

The defendants were ordered to pay the applicants' costs on this reference.

Copyright Act of 1956. Statutory Licence. — The interpretation of Section 8 of the Copyright Act, 1956, which provides for a statutory licence for gramophone records, was the issue in a recent action in the United Kingdom. The case went up to the House of Lords and produced an authoritative ruling on the scope of the provision in question.

The case was previously reported in No. 47 *b*, p. 49, and No. 48 *b*, p. 31, of the *E.B.U. Review*. Chappell and Co. Ltd, the publishing firm, and Winneton Music Corporation, as sole licensees and owners of copyright in a dance tune called *Rockin' Shoes*, had brought an action against The Nestlé Co. and the Hardy Record Manufacturing Company, alleging that they had infringed the copyright by producing and offering records for sale to the public at 1s. 6d. plus three wrappers from Nestlé chocolate bars without obtaining the plaintiffs' authorisation, on the strength of the statutory licence provisions. The plaintiffs' argument was that this transaction could not be regarded as an " ordinary retail sale " of records within the meaning of the Copyright Act and that the price of 1s. 6d. did not represent an " ordinary retail selling price " which would permit the fair assessment of the royalties for which the Act provided. The first judge found for the plaintiffs and granted an injunction to restrain the defendants from continuing their operations, but gave a stay of execution in respect of recordings already made pending a decision by the Court of Appeal. The latter reversed the judgment and decided by a majority of two to one that the transaction constituted an ordinary retail sale which justified the application of the statutory licence system. The Court of Appeal nevertheless gave the plaintiffs leave to appeal to the House of Lords.

The House of Lords, allowing the appeal, affirmed the decision of the first judge by ruling that a cheap sale of records to purchasers of chocolate is not an ordinary retail sale enabling the vendor to require the copyright holder to accept a royalty calculated on the selling price.

Two of the Lords of Appeal in Ordinary judging this appeal were of the opinion that the operation was similar

in all respects to an ordinary sale and that there were no grounds for refusing the defendants the right to apply the statutory licence. The fact that the purchaser had to attach three chocolate wrappers in addition to the 1s. 6d. did not change the actual price of the records, since those wrappers were of no value in themselves to the Nestlé Co., which merely threw them away. However, the majority of the Lords held that the transaction in question was not what Parliament had had in mind. Parliament had contemplated sales at normal prices and not transactions in which the retailer would fix the price to suit himself, without any relation to the ordinary economic price. Parliament would never have established a relationship between the royalty and the retail price if it had been thinking of transactions in which possibly the main part of the consideration was to be other than money.

UNITED STATES

First Judgment Against the AFM. — Mention has several times been made in this publication (in particular in No. 42, p. 174, and No. 55 *b*, p. 32) of the suits brought by the Californian musicians against the American Federation of Musicians for having paid into a Fund certain supplementary remunerations obtained under agreements with the record manufacturers and motion picture companies, while in the opinion of the musicians concerned these sums were wage increases which ought to be paid to them individually.

The American press now carries the news that Judge Clarence L. Kincaid of the Los Angeles Superior Court, in a judgment handed down on 22nd April, has ruled that approximately $1.8 million paid into the Fund by the record manufacturers should be restored to the plaintiff musicians. The Judge thereby recognises the validity of the claim of the 6,000 musicians that the sum in question represented a wage increase of about 21% and could not be diverted to swell the fund.

The general counsel of the AFM announced that appeal would promptly be lodged against this decision which, if upheld, would certainly constitute a first step towards the disintegration of the Fund and the end of the collective agreements entered into by the AFM over many years.

BOOK REVIEWS

Kulturabgabe und Kulturfonds, by Erich Schulze. Franz Vahlen G.m.b.H., Berlin and Frankfurt-am-Main, 1959.

Mr. Schulze, in his unceasing efforts to improve the author's position, combines the task of directing the German performing right society, a job that would absorb and indeed weary many a lesser man, with his private work as a publicist. New works flow constantly from his pen, and of these the latest deals with the problem of the *domaine public payant*, which the German writers call the *Kulturabgabe*, or royalty for the encouragement of the arts.

Not surprisingly the author declares himself to be a wholehearted supporter of this institution. First of all, however, he makes out a forceful and in some respects persuasive case for the perpetual protection of copyright. One has to make a choice. The *Kulturabgabe* presupposes that the proceeds of works that have fallen into the public domain should be used to establish a fund for the encouragement of the arts, which would apparently be a relief fund for authors. If the latter scheme is adopted, there would no longer be a public domain, and hence the source of revenue accruing to the fund would dry up. Perfect distributive justice would thenceforward prevail: the immortal writers would provide their heirs or assigns with a never-ending income. In logic this is fair enough, and I willingly acknowledge the law-maker's power to determine the term of copyright, whether limited or unlimited. Once the work has been divulged, it really belongs to all, and the author retains his initial sovereignty only by the will of the ruler. The latter is thus free to choose for what period the presumption of relinquishment to the general public will be inoperative. Why not go all the way and postpone the advent of the public domain until Doomsday? Mr. Schulze suggested this in connection with the latest work on the revision of German copyright legislation, but he abandoned the idea of applying his theory fully and retroactively, and of returning to the copyright field all the works already in the public domain which he seeks to abolish. He must have foreseen the difficulties, which would have been formidable ones. Hence his complementary proposal to establish an arts fund by means of payments out of the proceeds from works not in copyright at the commencement of the Act to make copyright of unlimited duration.

I dare say Mr. Schulze has no great illusions as to the chances of literary and artistic property in Germany being placed on the same footing as the traditional forms of property, immune to the ravages of time. Copyright expires almost everywhere at the end of a certain term of years after the author's death, and as far as we mortals can judge it would be Utopian to try to convert it into a perpetual right. But that does not weaken the arguments in favour of the *domaine public payant*. On the contrary, it is when protection is fated to lapse that the situation is most propitious for the institution of an

over-all collection system to establish an " arts fund ". If copyright no longer has the millstone of limited, if variable, duration round its neck, it will become impossible, as we have seen, to broaden the scope of the *domaine public payant* in step with the increase in the category of non-copyright authors capable of being laid under contribution.

As I have said, the question whether the *domaine public payant* is or is not to be recommended is answered by Mr. Schulze in the affirmative. Like the incomparable propagandist that he is, he draws on illustrations to drive his points home. With the aid of well-chosen examples (Wagner, Johann Strauss senior and junior, Suppé, etc.), he compares the statutorily limited and now expired term of copyright of these composers to the no less statutory permanence of various large industrial undertakings (the Rockefeller group, the Oetker shipbuilding firm, and the Opel motor works). To tell the truth, this subtle and thought-provoking parallel is chiefly a weapon for Mr. Schulze as the defender of perpetual copyright, as being a measure calculated to restore the balance between the intellectual and the industrialist. But it can also be said that the *domaine public payant* would enable relief to be given to authors and their families who are in hardship or in need; a perpetual copyright, on the other hand, would unilaterally benefit the heirs of well-known authors, who are doubtless occasionally in dire straits (e.g. Lortzing who died in poverty, and whose niece received for her 86th birthday a bunch of flowers and a free ticket given by the municipality of Bielefeld), but who often enjoy all the concomitants of wealth. Our contemporaries, so taken with social security and so conscious of their responsibilities towards the underprivileged—to use the catchwords *à la mode*—might well regard the *domaine public payant* as a means of improving the remuneration for labour and the distribution of material wealth in the field of intellectual creation.

However, one must not blind oneself to the difficulties of such an undertaking; the distribution of the proceeds will whet people's greed and may encourage self-styled vocations that the world would be better off without. For while the work of writers and artists as such is necessary to the public at large, this does not mean that a specific number of individuals should be engaged in this work. Long ago Degas said that the fine arts should be discouraged, and in a wider sense the natural selection that eliminates the weaker brethren makes common sense. Might not the *domaine public payant* act as a kind of charitable rein ? I, for my part, am inclined to think so. Nevertheless, Mr. Schulze's essay shows that the idea is in the air, and indeed that several countries (e.g. Belgium, France, Italy, Mexico, Czechoslovakia, Hungary, Yugoslavia and the USSR) have carried it into practice in varying degrees. The provisions in question are, as a matter of fact, rather a motley collection and are hardly comparable one with another. Lumped together under the common denominator of the *domaine public payant*, they form a documentary, rather than a systematic, whole. Our thanks are due to Mr. Schulze for having compiled them with the patient care that he devotes to all his literary enterprises. B. M.

Charte du Droit d'Auteur — Charta des Urheberrechts (Charter of the Author's Right). Internationale Gesellschaft für Urheberrecht E.V. Franz Vahlen G.m.b.H., Berlin and Frankfurt-am-Main, 1958.

The *Charter of the Author's Right* is the handiwork of the CISAC, the International Confederation of Authors' and Composers' Societies or, to be exact, of the lawyers on the so-called Legislation Committee of this vast apex organisation. It is not a model Bill, of the sort once drafted by the International Literary and Artistic Association, but a manifesto in which the authors' international sets forth its conception of copyright and the well-springs of its policy.

Close-knit and thought-provoking, the Charter enunciates a number of general notions which, while not new, are nevertheless worth recalling. It does no harm, for instance, to explain that works of the intellect are at once an off-shoot of the author's personality and a source of business interests, which accounts for the dual function of copyright. It is also well to bring out the difference between the literary or artistic work as a creation of form and the invention as a technical creation, the first being the spontaneous striving of genius or talent towards self-expression irrespective of the world around it, the second a link in a chain of earlier discoveries.

This difference affords the authors of the Charter an argument against compulsory licences which, as they see it, cannot be justified by any general public interest. What does this mean ? If such an interest were to emerge in circumstances admitting of no doubt, would we really rule out the compulsory licence ? If anything is unjustifiable, it is surely this. Though perhaps the authors of the Charter are suggesting that it is inconceivable that a general public interest should be a match for copyright, in which case this opinion should be recorded, with or without a question mark. Anyhow, the thought behind all this is not altogether clear.

The Charter explains very aptly that by exercising the eminently personal right of first publication, the author allows his work to pass from his own sphere of privacy into public and social life, upon terms he himself has fixed. But this change of scenery is bound to make a difference; a work thus launched into society could hardly be treated exactly as if it had never left the " private domain " of its author (I refer to the *Geheimsphäre* dear to German legal writers). The Charter implicitly recognises that the claims of the general public may limit copyright, for it admits that copyright expires at the end of a certain term, though as late as possible, it being understood that the *droit moral* should be perpetual. However, the authors would like this " concession " (for so they regard it) to be the only one, or in other words there should be no restrictions on copyright as long as copyright subsists.

This, to my mind, is wishful thinking. All the laws contain exceptions in respect of copyright, and it would be silly to regard this unanimity as mere unfairness to authors of literary and artistic works. On the other hand, one must insist that the public interest to which the author's interest must sometimes yield should always be conscientiously weighed and proved by decisive arguments. If, for example, charity concerts were given exemption from copyright, would any essential interest of the community be served, especially when the use of the hall, the lighting and the heating have to be paid for? Merely to state the question is to answer it in the negative. Hence any provision calculated to weaken the prerogatives of authorship calls for thorough consideration of the interests involved. The decision will go against the author only when the scales dip clearly in favour of the other party, and the solutions adopted must be re-examined from time to time.

The Charter cites one case where a situation hitherto regarded as satisfactory should be reviewed. The reproduction of a work for private use is still generally permissible without the authorisation of the author or his assigns. The original idea was that only the public uses of a work required the prior consent of the copyright holder, but we now see that the tape recorder puts a different face on the matter. With this invention it is possible nowadays to record on tape performances of musical compositions, recitations of literary works, etc., in such a way as to dispense the recorder from purchasing the work (and the rendering) thus recorded. This is a non-public use, to be sure; should it be countenanced, on the grounds that copyright is not supposed to obtrude itself into private life? A thorny problem indeed. In the first place, the very principle that only public performance of the work is subject to the author's consent is not a universal one, and is foreign to German law among others. In the second place, it is obvious that "fair dealing" with a work for private use should not entail a reduction in the profit that the author can properly expect to receive. The tape recorder implies this danger, whereas hand copying of printed publications is practically unobjectionable. The same applies to photostats and microfilms. It is therefore understandable that the authors should wish to restrain the making of copies that are likely to compete with the right. They call for appropriate solutions on the legislative or contractual plane, though they hope that the steps considered necessary will not check the spread of scientific and cultural knowledge by the above-mentioned means. One cannot but appreciate the intention. In fact everything has its price. If the use of the tape recorder, the microfilm or the photostatic copy were to be regulated in one way or another, the circulation of intellectual property might well feel the effects. But this drawback, if it is one, must be accepted; in the case in point, the interests of the author have priority over the comfort of the consumer (with the possible exception of scientific documentation, for which a carefully limited exemption might be provided).

The Charter naturally devotes one of its chapters to the function of the authors' societies. The latter are at the present time an undeniable force in business: the turnover of SUISA, the Swiss society, ran into some six million Swiss francs in 1958. *Ab una disce omnes.* One is in fairness bound to recognise the great and rewarding promotional campaign carried on by the International Confederation of Authors' and Composers' Societies (CISAC) to link up as many national societies as possible in a network of contracts in which the international protection of authors' rights, so often proclaimed in multilateral Conventions, descends from the pinnacles of theory to the fertile plains of practice where the golden harvest ripens. The international control by authors' societies of the most widely exercised prerogatives of authorship is an achievement of our times, and one that was begun by Beaumarchais in the 18th century. The honour and the merit rest with the administrators and directors in the major "producing" countries who organised the collection and distribution of copyright fees. Nevertheless one might venture to suggest that the deductions sometimes made for expenses and salaries have seemed a little on the high side. True, the authors did not lose anything, since without the societies their receipts would have been much less, and might have dwindled to nothing. But the impression remains that some administrative officials have managed to do pretty well for themselves at the authors' expense. I hasten to add that others have always scrupulously made a point of earning their salaries rather than merely drawing them.

Drafted in excellent French and translated into English, German, Italian, Spanish and Portuguese, the *Charter of the Author's Right* is a skilful digest of the authors' doctrine. I regard it more as a policy statement than a legal treatise. This is not a criticism—far from it. The Confederation is bound to uphold a policy of its own. Copyright, as a legal instrument binding on the community in a special field, comes within the purview of the legislative authority, which will seek to balance interests against requirements.

B. M.

E.B.U. ACTIVITIES

TWENTIETH MEETING OF THE ADMINISTRATIVE COUNCIL

The EBU Administrative Council, accepting the kind invitation of the RAI, met in Rome from 29th May to 1st June 1959 at the headquarters of the Radiotelevisione Italiana, under the chairmanship of the President, Sir Ian Jacob, assisted by Mr. E. Sundström and Mr. C. Chavanon, Vice-Presidents. There was a full agenda with 21 items including the admission of new associate members, the study of new statutory provisions, the accounts for the financial year 1958, and a number of questions on general and administrative affairs.

The Chairman of the Technical Committee, Mr. E.L.E. Pawley, presented the report of the Bureau of that Committee as drawn up after its meeting in Rome in March 1959. (See *E.B.U. Review* No. 54 *a*, page 48).

Then the Chairman of the Programme Committee, Mr. Marcel Bezençon, commented on the report of the Bureau of the Committee which had been drafted after the meeting in Stockholm in April 1959. Fuller details are given on this subject below.

The report of the Bureau of the Legal Committee was presented by its Chairman, Mr. M. Lenoble; and the Secretary of the Committee, Mr. G. Straschnov, gives an account below of the meeting of the Bureau in Bled (Yugoslavia) in April 1959.

The Director-General of the Radiodiffusion-Télévision Française, Mr. Christian Chavanon, submitted the report drawn up after the Conference on the Development of Sound Broadcasting. More details are given below.

The Administrative Council confirmed in their entirety the proposals submitted to it and placed on the agenda of its next meeting the study of the events which will mark the 10th anniversary of the foundation of the EBU in Torquay on 11th February 1950.

The next meeting of the Administrative Council has been fixed for Saturday 24th and Monday 26th October 1959 at the headquarters of the Union in Geneva.

THIRTEENTH MEETING OF THE BUREAU OF THE PROGRAMME COMMITTEE

Under the chairmanship of Mr. Marcel Bezençon, assisted by the two Vice-Chairmen, Mr. Cecil McGivern and Mr. Jean d'Arcy, and the Director of the Administrative Office, Secretary of the Committee, the Bureau of the Programme Committee held its 13th Meeting on 29th April in Stockholm, at the kind invitation of Mr. O. Rydbeck, Director-General of Sveriges Radio.

This session had been preceded, as is customary, by meetings of GTV/1 (exchanges on film), under the chairmanship of Mr. S. Pugliese, and GTV/2 (direct exchanges), under the chairmanship of Mr. J. d'Arcy. The agenda were particularly heavy and almost all the members of the Union were present at these meetings. The Bureau had a full attendance and studied decentralised production of documentaries and the interest presented by the various series produced so far or in course of production. It took note of the participation of Spain and Portugal in these productions.

The International Agricultural Newsreel continues to develop. A meeting of those responsible for this International Magazine was held in Paris in February 1959 and another meeting is planned for 1960, to take place in Rome.

The International Children's Newsreel interests all members and the Administrative Office has been informed that Nippon Hoso Kyokai TV also intends to contribute.

Mr. Bezençon made a statement on the question of exchanges of news items over the Eurovision network which is being studied by the Rengelink Sub-Group. A second trial series was held in May 1959 and on this occasion there was a greater participation of members than in October 1958.

Exchanges of live programmes on Eurovision play a very important part, and for the period from 1st July to 31st December 1958 there was an average of about four transmissions a week on the Eurovision network. For the few programmes offered on Eurovision, there is a great deal of long and careful preparation to be done at the Administrative Office in close collaboration with the various members. Special programmes were devised to mark the 5th anniversary of Eurovision on Saturday 6th and Sunday 7th June 1959.

As regards the proposals for international quiz games, it seemed to the Bureau of the Programme Committee that in view of the difficulties involved for a broadcast of this type in countries of different languages, the idea should be abandoned for the moment.

Sporting events, which make an important contribution to the programmes transmitted on Eurovision, took up a considerable amount of the Bureau's attention. In this connection, the cooperation between the Legal Committee and the Programme Committee on the question of free access to news should be stressed.

The Bureau of the Programme Committee also studied the participation of the Union in the International Film and Television Council, UNESCO's East-West major project, the Grand Prix of the 1959 Eurovision Song Contest (see *E.B.U. Review* No. 54 *b*, page 46), the 1959 Eurovision Grand Prix of Television Films at Cannes, the Salzburg Prix, and other questions of general interest.

The Administrative Council, meeting in Rome, confirmed in their entirety the recommendations of the Bureau of the Programme Committee.

The next plenary session of the Programme Committee and the 14th Meeting of the Bureau of the Committee will be held in London at the end of September at the kind invitation of the BBC.

TWENTY-SECOND MEETING OF THE BUREAU OF THE LEGAL COMMITTEE

At the invitation of the Yugoslav broadcasting organisation, the Bureau of the Legal Committee held its twenty-second meeting at Bled in Slovenia from 27th to 30th April 1959. The Chair was, as usual, occupied by Mr. Lenoble (RTF), assisted by Dr. H. Brack (ARD). In addition to the nine organisations which are members of the Bureau, four others were represented by observers, pursuant to a recent decision of the plenary Legal Committee granting admittance to meetings of the Bureau to organisations not having a seat thereon.

The questions discussed were numerous and important, the business consisting partly of proffering suggestions to the Administrative Council regarding the policy to be adopted in certain fields of interest to the EBU and partly of proposing solutions concerning dealings between member organisations on the occasion of programme exchanges.

In the former category were the questions arising out of the activities of intergovernmental organisations. In reference to the preparation of a Convention for the protection of ancillary rights, for instance, the Bureau had to review the situation in the light of recent decisions reported in these pages, which suggest that the ILO, the Berne Union and Unesco are reverting to the idea of a single Convention worked out by a committee of experts appointed by them jointly.

The activities of the Council of Europe also claimed the attention of the Bureau, which defined its position towards the Council's move to promote a European accord on the protection of television broadcasts and also approved the agreement entered into with the Music Section of the International Publishers' Association and the First and Second Federations of CISAC regarding the delimitation of repertoires. With regard to the European Agreement on the circulation of television films signed in Paris last December, the Bureau took steps to secure its speedier ratification.

The relations between the EBU and the international performers' federations were carefully reviewed in relation to both television and sound broadcasting. On the subject of television it was reaffirmed that the international Agreement between EBU and the federations on Eurovision justified the retention of the inclusive-fee system instead of the supplements provided for under the Agreement. As regards sound broadcasting it was considered that there would be no point in negotiating an international agreement, since exchanges had hitherto gone off quite smoothly in the absence of international regulations.

Although still somewhat distant, the revision of the Berne Convention stood high on the agenda for the Bled meeting. The broadcasting organisations attach considerable importance to the making of certain alterations in this charter of copyright, and it is never too early to embark on the preliminary consideration of such a vital matter. In its deliberations the Bureau took note of the fact that it had among its members the representatives of Sveriges Radio, the significance of which will be apparent when it is remembered that the next revision of the Berne Convention will take place in Stockholm and that under Article 24 of the Convention the Administration of the host country prepares, with the assistance of the Bureau of the Berne Union, the work of revision. In the same context the Bureau approved and recommended to the Administrative Council the text of a memorandum dealing with Article 14 of the Berne Convention and expressing EBU views on the burning topic of motion picture law.

With the growth of Eurovision and the exchange of video recordings between members of the EBU, it is imperative to have fixed rules on certain matters. The Bureau suggested that the Council should recommend to member organisations that common principles be introduced into contracts commissioning works for broadcasts liable to be offered in the form of relays, films or telerecordings. In addition the Council was asked to approve a standard contract governing the exchange of films and telerecordings between member organisations with a view to reducing the risks inherent in such transactions to the minimum.

On this same subject of Eurovision, various difficult problems had been raised by the two experiments made by certain member organisations in exchanging news items via the European network. These problems are of a financial, administrative and legal nature and require careful solution since they involve interests extraneous to broadcasting and may have repercussions in several different fields. At the initial stage the Bureau confined itself to proposing that the Administrative Council should lay down the principle that a broadcast or part of a broadcast given over the Eurovision network may not be diverted by a relaying organisation for use by an outside body (e.g. a newsreel agency or an organisation not taking the relay of such a broadcast) without the prior consent of the organisation originating the broadcast. The Legal Committee will keep this matter under review in conjunction with the Programme Committee and, if necessary, the Technical Committee.

The Bureau further considered the ineffectiveness of the Unesco international agreements on the importation of cultural materials. Although widely ratified, these agreements are of little benefit to the radio organisations, which are large importers of material and equipment in one way or another. The Bureau asked that Unesco be approached with a view to seeing

what could be done to remedy this somewhat unsatisfactory situation.

The standard contracts between the EBU and outside agencies need revising from time to time to keep them in line with current developments. It had been suggested, for instance, that the EBU/BIEM standard contract on the circulation of recordings of sound and visual broadcasts should be amended in certain respects. The Bureau considered the requests submitted by the BIEM and instructed the Administrative Office to furnish more detailed information on the existing situation, to see whether the proposed revision was warranted.

At the invitation of the BBC, which was unanimously accepted, it was decided to hold the next session of the Legal Committee in London, from 23rd-26th September 1959.

1959 EUROVISION GRAND PRIX OF TELEVISION FILMS, CANNES

This event which is held under the auspices of the European Broadcasting Union took place in Cannes, within the framework of the XIIth International Film Festival, from 8th to 12th May 1959. The purpose of the competition is to encourage in a spirit of friendly cooperation the production of filmed programmes of a high standard, specifically designed for use on television. The Eurovision Grand Prix of Television Films is open to all producers of television films, except the radio and television organisations.

This year ten countries participated and some 40 films were submitted to the jury.

The Grand Prix for feature films was awarded to:

Une simple histoire by Marcel Hanoun (France),

and for documentaries to:

L'Essor féminin by Douglas Tunstell (Canada).

Works that were highly commended in the category of feature films were:

Eddie by Jack Smight (United States), for its dramatic qualities and the interpretation of Mickey Rooney, and

The Girl and the Shoes by Ib Scmedes (Denmark)

for its poetic qualities.

Highly commended in the category of documentaries:

Arditi del Mare by Victor de Sanctis (Italy)

for its excellent technique.

CONFERENCE ON THE DEVELOPMENT OF SOUND BROADCASTING

This conference, which was organised at the suggestion of the Radiodiffusion-Télévision Française, was held in Rome on 27th and 28th May 1959 at the headquarters of the RAI-Radiotelevisione Italiana and was attended by representatives from 24 countries.

At the proposal of Mr. M. Rodinò, Administrator-Delegate of the RAI, the Director-General of the RTF, Mr. C. Chavanon, was elected chairman of the conference and the Director of the EBU Administrative Office acted as secretary.

Documents for this meeting had been distributed to all the participants. These included the reports of the ARD (Germany), the BBC (United Kingdom), the Netherlands, the RAI (Italy), Norway, Sweden, Switzerland, the ABC (Australia) and the NAEB (United States).

The Administrative Office, in collaboration with the Technical Centre, has prepared a catalogue of exchanges of radio programmes containing all the necessary information on these exchanges.

The agenda of the conference included the study of the data acquired by each country over a given period of time and the steps already taken, such as improvement in quality, the search for new forms, exchanges of programmes, the search for new audience categories, wired broadcasting, new services rendered to listeners, publicity in television programmes for those of sound radio, coordination of programmes, etc.

The participants also studied how it would be possible to estimate listeners' tastes and needs in the next few years in the light of the development of television.

In conclusion, the participants made suggestions on possible ways of maintaining or increasing the interest in and audience of sound radio and also on the distribution between sound radio and television of the types of programmes best suited to each.

As Mr. Chavanon remarked, the discussion had been very varied and had consisted of a wide survey of the question rather than a detailed study. Participants agreed on the advisability of continuing the study and drafting a well defined questionnaire for members of the EBU on the points which emerged from the discussion. This questionnaire will have to be completed with great care and sent back to the Administrative Office which will analyse the results.

At its 20th Meeting, the Administrative Council decided to set up an ad hoc group to study the development of sound broadcasting. This group, under the chairmanship of Mr. Chavanon, will be composed of representatives at the directorate level of the ARD, the BBC, the RAI and Sweden, as well as the Director of the Administrative Office.

CONFERENCE ON TELEVISION ADVERTISING

Following the decision of the Administrative Council and General Assembly, a Conference on Television Advertising was held in London at the invitation of the ITA and the ITCA, from 20th-23rd May 1959, under the chairmanship of Mr. Norman Collins and Mr. Bernard Sendall. Fourteen members of the Union took part in this meeting which counted about forty participants.

Sir Robert Fraser, Director General of ITA, gave a report on the different methods of advertising on television after which several rapporteurs spoke on the influence of advertising on television, illustrating their talks with practical demonstrations.

Mr. G. Straschnov, Legal Adviser to the Union, gave an account of the legal problems of television advertising.

The discussions which followed the reports were extremely interesting and the participants hoped that the question of television advertising would be followed more closely by the Union.

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Docteur en Droit
en collaboration avec

SVANTE BERGSTRÖM
Professeur
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PAOLO GRECO
Professeur
à l'Université de Turin

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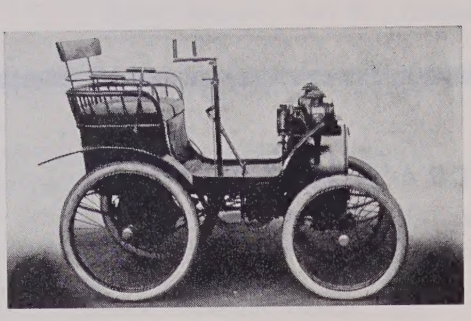

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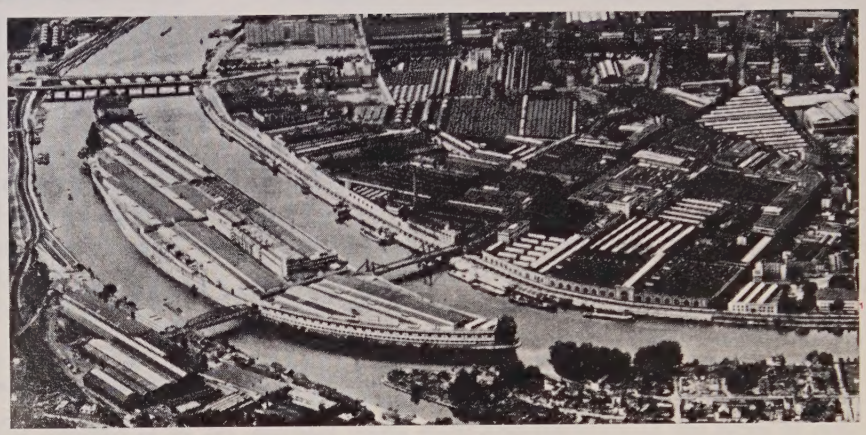

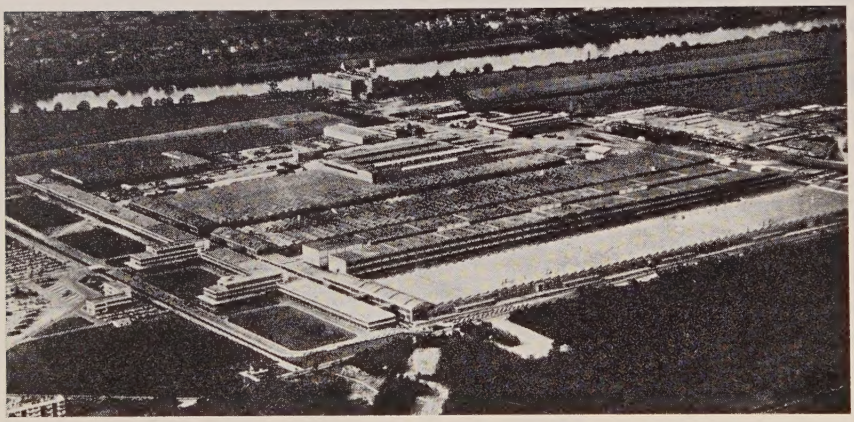

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Iceland — Rikisutvarpid

Ireland — Radio Eireann

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Italy — RAI - Radiotelevisione Italiana

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Luxembourg — Compagnie Luxembourgeoise de Télédiffusion

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